

**9. Comment:** NOAA should expand the boundary of the Sanctuary to include waters surrounding the entire State, including the Northwest Hawaiian Islands (NWHI).

**Response:** NOAA agrees that the boundary of the Sanctuary should be expanded beyond the Congressionally-designated boundary (i.e., Maui County). However, NOAA does not believe that the NWHI should be included within the Sanctuary boundary for a variety of reasons. First, few humpback whales have been reported around the atolls, islands, banks, and reefs of the NWHI. Second, this area is managed as a national wildlife refuge, significantly restricting access to the area, even for research purposes. Finally, the inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts from other parts of the main Hawaiian Islands.

**10. Comment:** NOAA should expand the boundary of the Sanctuary to include areas of humpback whale habitat throughout the U.S. Exclusive Economic Zone (EEZ).

**Response:** NOAA does not believe that a Sanctuary encompassing all of Hawaii's EEZ is necessary or manageable. Most humpback whales can be found within the 100-fathom isobath around the main Hawaiian Islands. An EEZ-sized Sanctuary would expand the Sanctuary to areas that are very remote -- hundreds of miles from human population centers. As a result, comprehensive management, including additional research, long-term monitoring, and enforcement demands would significantly strain financial resources and curtail effective management efforts in other areas of the State where both whales and humans are more likely to interact. Regulatory protection offered by the MMPA and the ESA, however, still protects the humpback whale throughout Hawaii's EEZ.

**11. Comment:** NOAA should adopt a boundary that encompasses areas of highest reported concentrations of humpback whales so that the Sanctuary does not include areas where whales are not typically present.

**Response:** Although this boundary encompasses a series of discrete areas known to be extensively used by humpback whales, it fails to include other important identified areas of the main Hawaiian Islands that humpback whales utilize for transit, courting/mating, breeding, calving, and resting activities. In addition, this boundary does not consider the fact that an increasing whale population will eventually require more space to successfully reproduce, calve, and nurse, and it does not allow for the adequate comprehensive protection of humpback whales and their habitat throughout the Hawaiian range. Finally, this boundary fails to recognize the importance of DOD military use areas and activities that are essential to national security and defense.

**12. Comment:** NOAA should adopt as a boundary for the Sanctuary the 100-fathom isobath surrounding all the main Hawaiian Islands including Kaula Rock.

**Response:** While this boundary accurately reflects the current understanding of humpback whale distribution and habitat use in Hawaii, it fails to recognize the significance of DOD military use areas and activities that are essential to national security and defense. Furthermore, this boundary is slightly larger in scope than the NOAA preferred boundary, as it includes marine waters surrounding Niihau and Kaula Rock. The inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts from other parts of the main Hawaiian Islands.

**13. Comment:** NOAA should exclude the Big Island from the Sanctuary's boundary because there are not as many whales around the island as in other parts of the State, and the Big Island residents do not want the Sanctuary there.

**Response:** NOAA has received oral and written comments both in opposition to and in support of the inclusion of the Big Island within the boundary of the Sanctuary. NOAA believes that the waters around the Big Island constitute important habitat for the humpback whale. Research has shown that the northwest portion of the Big Island contains high concentrations of whales. The whales are also known to use other areas around the Big Island for reproduction, calving, and nursing activities as well. NOAA believes that inclusion of the Big Island will help ensure that comprehensive management and protection of humpback whales and their Hawaiian habitat will be applied statewide. NOAA does not believe that the inclusion of the Big Island will result in significant adverse socio-economic impacts on marine users, and that the benefits associated with a national marine sanctuary (including research and educational efforts, and enhanced enforcement of existing laws) would be distributed throughout the main Hawaiian Islands.

**14. Comment:** NOAA should include the Big Island in the Sanctuary boundary.

**Response:** NOAA agrees and the Big Island has been included in the boundary with the exception of harbors, ports and small boat basins (see previous response).

**15. Comment:** All of the boundary alternatives should be justified by whale needs and through supportable scientific evidence.

**Response:** In developing the boundary alternatives and selecting the preferred boundary alternatives, NOAA used the most current scientific evidence to determine whale locations around the main Hawaiian Islands. Since population studies have shown that humpback whales frequent the 100-fathom isobath region more than other areas of the State, NOAA decided on a statewide boundary using that depth contour as an outer limit. Certain areas around the State have not been included, however, based on and because of DOD national security interests (see response #8). Not including such areas should not compromise the purposes of the HINMSA.

#### **KAHOOLOWE**

**16. Comment:** There is a discrepancy between the authority of the Kahoolawe Island Reserve Commission (KIRC) (shore to two nautical miles) and the Hawaiian Islands National Marine Sanctuary Act (HINMSA) language excluding the waters around Kahoolawe (shore to three nautical miles). This one mile gap in jurisdiction needs to be corrected.

**Response:** Although there is a one mile gap between the Congressionally designated Sanctuary and KIRC's authority in the water surrounding Kahoolawe, in the preferred alternative NOAA does not propose to include the one mile area into the Sanctuary boundary at this time. In December 1995, the Secretary of Commerce certified that the three mile area was unsuitable for inclusion into the Sanctuary. The HINMSA was amended in 1996 to allow the KIRC to request inclusion into the Sanctuary the marine waters within three miles from Kahoolawe. If at some point in the future such waters are deemed suitable for inclusion, the entire three mile area would likely be included within the Sanctuary. Special management measures would likely be necessary for the area lying within two nautical miles of Kahoolawe to reflect KIRC's management authority and responsibility.

**17. Comment:** The waters around Kahoolawe could be added to the Sanctuary without the opportunity for public comment. This would be a violation of the National Marine Sanctuaries Act (NMSA).

**Response:** The public has had at least two formal opportunities (March 1993 scoping meetings and September-December 1995 public hearings and comment period on the DEIS/MP) to comment on the inclusion of the waters around Kahoolawe in the Sanctuary. In December, 1995, the Secretary of Commerce certified that the waters around Kahoolawe are unsuitable for inclusion in the Sanctuary and, therefore they are not part of the Sanctuary boundary. In 1996, the HINMSA was amended, in part to provide that should NOAA determine in the future that Kahoolawe waters may be suitable for inclusion in the Sanctuary, NOAA will prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion. This process will include the opportunity for public comment. Further, the Governor would have the opportunity to certify his or her objection to the inclusion, or any term of that inclusion, and if this occurs, the inclusion or term will not take effect. NOAA is committed to providing additional opportunities for public input, and will also seek recommendations and advice from the Sanctuary Advisory Council (SAC). In addition, NOAA will work closely with the KIRC and the State concerning the inclusion of Kahoolawe waters in the Sanctuary.

#### RECOMMENDATIONS

#### Existing Regulations

**18. Comment:** Humpback whales are already protected by the MMPA, the ESA, and State regulations. There is no need for additional regulatory protection.

**Response:** In 1992, Congress enacted the HINMSA, recognizing the important role that the Hawaiian Islands play in the preservation and long-term vitality of the endangered humpback whale. The waters around the Hawaiian Islands constitute essential breeding, calving, and nursing areas for this important national resource, and are subject to damage and to loss of their ecological integrity from a variety of disturbances.

The HINMSA directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary in consultation with appropriate Federal, State, and local government authorities, as well as other interested persons (i.e., marine users and the general public). The purpose of the Sanctuary designation is to promote the comprehensive and coordinated protection of the humpback whale and its habitat, which NOAA has determined can be achieved through research, monitoring, education, and better enforcement of existing regulations.

NOAA reviewed the scientific literature concerning potential impacts to humpback whales and the existing Federal and State regulations and programs designed to protect humpback whales and their habitat, and concluded that no additional independent regulatory prohibitions or restrictions are needed for their protection at this time. NOAA believes that other coordinating and non-regulatory protection measures are needed, however, to ensure the long-term recovery and vitality of humpback whales and their habitat. While direct regulation is certainly one means of providing protection for resources, NOAA believes that education, research, monitoring, coordination, and better enforcement of existing laws are also necessary to ensure comprehensive protection for humpback whales and their habitat.

NOAA has found that there are adequate existing regulations in place to provide protection of humpback whales and their habitat in Hawaii at this time. However, NOAA, in consultation with other Federal and State agencies, resource managers and researchers, has determined that

enforcement of existing authorities needs to be supplemented to provide for greater, coordinated and comprehensive protection of humpback whales and their habitat. Supplementation will be accomplished by incorporating certain existing restrictions as Sanctuary regulations. Such action will enable the Sanctuary to bring the humpback whale perspective to the application of these existing authorities, and to allow for enforcement mechanisms and, when appropriate, civil penalties to be brought under the National Marine Sanctuaries Act for violations of such authorities.

NOAA also recognizes that existing authorities do not provide the necessary resources for agencies to develop comprehensive and coordinated education, research, monitoring, and enforcement programs to ensure the continued viability of humpback whales and their habitat. Nor do these laws provide the degree of public input into managing these resources as does the NMSA. NOAA has therefore determined that there is a need to supplement these other non-regulatory resource protection management tools, and that the Hawaii Sanctuary can play an integral role in facilitating dialogue and in coordinating with the other Federal, State, and county agencies, and the general public. The Sanctuary Management Plan provides a comprehensive and coordinated regime, that complements existing efforts, to protect, manage, and conserve humpback whales and their habitat in Hawaiian waters so they may be enjoyed by both present and future generations.

**19. Comment:** How will the Sanctuary provide more protection for the whales given that they are already protected by existing regulations?

**Response:** NOAA believes that "protection" encompasses more than regulatory measures. Education, research, monitoring, coordination, and enforcement all contribute to protecting Sanctuary resources. In response to public and agency comments, NOAA is not issuing new, independent Sanctuary prohibitions or restrictions in Hawaii to protect humpback whales and their habitat. Instead, NOAA will essentially incorporate existing regulations to make up the regulatory portion of the Sanctuary management regime (see previous comment). This will increase protection for humpback whales and their habitat in several ways. First, this gives authority for the Hawaii Sanctuary to be a resource management agency that actually "sits at the table" and reviews permit applications for potential harm to Sanctuary resources. The Hawaii Sanctuary has a different and much more focused mission than any of the other agencies in Hawaii inasmuch as its primary concern is to ensure that humpback whales and their habitat are not adversely impacted. Since the Sanctuary is relying on existing regulations, the Sanctuary will not issue independent permits, but will work within the existing permit structures of agencies to ensure that potential impacts to whales are addressed. Memoranda of Understanding (MOUs) with the such agencies will detail how the Sanctuary will coordinate in reviewing permit applications.

Second, Sanctuary regulations also provide the necessary authority for the Sanctuary to directly work with Federal and State enforcement agencies to coordinate enforcement of permit violations. Although there are several different Federal and State enforcement entities, all are facing severe financial resource limitations. The Sanctuary can supplement these limited resources and enhance education and outreach efforts to ensure that the public is informed about existing regulations.

Finally, the regulations may provide an added deterrence to potential violators in that the Sanctuary program has a \$100,000 potential maximum civil penalty for persons violating Sanctuary regulations (whale approach and harassment, discharges, and alteration of the seabed). All Sanctuary fines assessed as a result of Sanctuary enforcement actions will, however, be based on a civil penalty schedule developed for the Sanctuary that will be made publicly available.

Non-regulatory features of the Sanctuary that will provide greater protection for humpback whales and their habitat include: the SAC, which can provide a framework for continuous dialogue between the Sanctuary Manager and resource managers, researchers, educators, enforcement agencies, marine users, and the public; research used to address management-related issues and to

answer unknown questions such as how and why whales change their behavior in response to various human disturbances; and proactive efforts to work with existing organizations and marine user groups to produce and disseminate information about how humans can minimize their impacts on humpback whales and their habitat and on the existing laws that protect Sanctuary resources.

**20. Comment:** Although Sanctuary program staff have stated that there will be no "new" Sanctuary regulations, doesn't the fact that the Sanctuary is incorporating existing regulations as part of its regulatory structure constitute new regulations? How is this different than the status quo in terms of permits, veto authority over projects, and enforcement?

**Response:** NOAA is essentially incorporating certain existing Federal and State regulations that protect (directly and indirectly) humpback whales and their habitat into the Sanctuary management regime as Sanctuary regulations. However, the Sanctuary regulations do not impose any new restrictions inasmuch as the regulations only impose the substantive restrictions which were already in place before the designation of the Sanctuary. They do not place any additional prohibitions or restrictions on marine users aside from those that already exist. Nor do the Sanctuary regulations provide authority to require and issue Sanctuary permits. The Sanctuary is developing MOUs with appropriate Federal and State agencies to facilitate review by the Sanctuary of other agency permit applications for activities that could impact Sanctuary resources, and, if necessary, provide recommendations to the agency considering issuing a permit on ways to prevent, minimize, or mitigate harm to these resources. These would be recommendations only, and the permitting agency ultimately determines whether to include the recommendations as part of its permit conditions. The Sanctuary regulations do not provide the authority for NOAA to veto, deny, or approve permits issued or authorized by these other agencies. The only "new" feature of these regulations would be that if an activity is conducted without a required permit, or in violation of the terms and conditions of an existing permit, such action would be a violation of the Sanctuary regulations. The Sanctuary would then coordinate with the appropriate Federal or State agency on any necessary enforcement actions. This regime is consistent with the input NOAA received throughout the public process from Federal and State agencies, resource managers, researchers and others regarding the adequacy of existing regulations as they pertain to protection of humpback whales and their habitat in Hawaii.

**21. Comment:** The current humpback whale approach regulations are flawed. The Sanctuary should create a "right of safe passage" or show some "intent to harass" so that as the humpback whale populations continue to increase and vessel-whale interaction becomes more common, vessel operators will still be allowed to transit an area without fear of being cited for a violation of an approach regulation.

**Response:** In 1987, the National Marine Fisheries Service (NMFS) published an interim rule under the ESA (52 FR 44912) establishing a 100-yard approach limit for vessels (or people), a 300-yard vessel approach limit in cow/calf areas, and a 1000-foot overflight limit to provide better protection for humpback whales and to minimize the effects of increasing vessel traffic on humpback whales. A final rule was published by NMFS in January 1995 (60 FR 3775) that retained the 100-yard vessel approach limits and 1000-foot overflight limit, but eliminated the 300-yard cow-calf areas.

NOAA recognizes a difference between approach and proximity to humpback whales, and that whales may approach vessels. The 100-yard approach regulation clearly states that approaching (moving toward) a humpback whale within the prescribed limits is prohibited. A vessel would not ordinarily violate the regulation by inadvertently being inside the 100-yard limit, or if a humpback whale surfaces or approaches within of 100 yards of a vessel. NMFS Enforcement agents and the NOAA Office of General Counsel (GC) assess alleged violations on a case by case basis to determine whether an approach has occurred, and whether an enforcement action is warranted.

The existing approach regulations appear to have successfully achieved protection for the whale while avoiding enforcement actions for merely being within 100 yards of a whale.

The National Marine Sanctuary Program is incorporating the NMFS approach prohibitions into the Sanctuary management regime. The Sanctuary program cannot independently make changes to regulations promulgated under other authorities (MMPA, ESA, or any other Federal or State regulation). The Sanctuary program, however, recognizes the concerns of the boating community over the enforcement of these regulations and the potential conflict due to increases in both the whale populations and in boating activities in Hawaii. The Hawaii Sanctuary will help coordinate and facilitate dialogue between concerned boaters and NMFS (Office of Protected Species and Office of Enforcement) and NOAA-GC. In addition, the Sanctuary's Management Plan will undergo a formal evaluation after five years, including a determination of the effectiveness of the Sanctuary regulations at protecting Sanctuary resources, and their impacts on marine users.

**22. Comment:** The Sanctuary should, in cooperation with boat operators, promote proper disposal of sewage from boat heads, encourage compliance with existing laws, and help implement existing regulations and programs.

**Response:** NOAA agrees. Water quality is one component of the humpback whale habitat that many people want to see improved and maintained. The Sanctuary can use the expertise available on the SAC and associated working groups to work with the boating community and operators to develop voluntary education programs aimed at achieving proper vessel sewage disposal and compliance with existing regulations. The Sanctuary is also supplementing existing regulations that pertain to discharges or deposits that could affect humpback whales or their habitat by making illegal discharges or deposits a Sanctuary violation.

### Future Regulations

**23. Comment:** The Sanctuary has not provided a guarantee that there will be no new Sanctuary regulations in the future.

**Response:** NOAA cannot make the guarantee that future regulations will never be necessary. It is possible that someday resource managers may identify a specific type of activity that could negatively impact Sanctuary resources or create conflicts among other Sanctuary users. While other non-regulatory options would be pursued first, regulation is one type of management tool that NOAA may choose to consider in order to protect Sanctuary resources or minimize user conflict. NOAA could not issue a new regulation, however, without first going through an extensive public review and comment process (see following response). The Governor would also have the opportunity to object to any new Sanctuary regulation as it pertains to State waters.

**24. Comment:** Should new regulations be necessary in the future, what is the process?

**Response:** NOAA must first identify and support that there is a need for a new regulation (e.g., that a Sanctuary resource is being, or could be negatively affected by some activity or that an activity is creating a conflict among Sanctuary users). NOAA would work with other Federal and State resource management agencies, the research community and affected user groups to collect all relevant and available information and scientific data that will be used to more clearly define the problem and identify potential solutions. NOAA will also seek advice and recommendations from the SAC and other resource management agencies prior to initiating any rulemaking.

If after coordinating with existing agencies and the SAC a decision is made to propose a new regulation, NOAA is required to, at a minimum, follow the procedures of the Administrative Procedure Act, requiring that adequate public notice and opportunity for public comment be given for new regulations. Further, if NOAA proposed a regulation outside of the scope of regulations

listed in the Sanctuary Designation Document, NOAA would be legally required to go through the designation process, including public review and comment, at least one public hearing, preparation of a Supplemental EIS, and gubernatorial review and approval. If the Governor objects, the regulation would not take effect in State waters. Finally, if NOAA proposed to substantively change an existing regulation, NOAA must provide for public review and comment and, although not legally required to do so, gubernatorial review and approval.

**25. Comment:** There should be no new regulations unless:

- i) the need for a new regulation is clearly demonstrated;
- ii) the disturbance results in loss of humpback whale life;
- iii) the negative impacts of the activity have been documented and substantiated by legitimate research; and
- iv) regulations are first approved unanimously by the SAC.

**Response:** NOAA agrees that there should not be any new sanctuary regulations unless there is a demonstrated need. NOAA will work closely with existing agencies, the SAC, the scientific community, and marine users to identify and clarify any potential problems before promulgating new regulations. NOAA will make all efforts to collect existing relevant scientific data or provide resources to fund research if necessary to investigate the nature, scope, and cause of such problems.

NOAA does not agree, however, that it should only regulate an activity if the activity is found to kill a humpback whale. NOAA firmly believes that resource protection should be proactive in nature and be responsive to potential problems as they arise -- this means acting when the problem is identified and confirmed, rather than waiting until after death occurred before taking any action.

NOAA fully intends to seek input from the SAC on the scope of any potential problems as well as solutions on how to solve those problems (regulatory and non-regulatory). NOAA views this SAC input, as well as those from other agencies and the public, as extremely important in shaping Sanctuary policy. NOAA disagrees, however, that it must first seek "unanimous approval" by the SAC before it could ever consider issuing a regulation. The SAC is an advisory body whose role is to provide advice and recommendations to the Sanctuary Manager on policy issues, including regulation. Unanimous approval is not necessary and is unrealistic given the broad spectrum of interests represented on the SAC. NOAA will consider the advice and recommendations of the SAC, as well as comments received during the general public comment period on a proposed regulation, to evaluate whether to proceed with promulgating a new regulation.

### **Habitat Regulations**

**26. Comment:** The Sanctuary program should develop a more detailed definition of habitat in the regulations to clarify how the Sanctuary will interface with other permitting agencies.

**Response:** NOAA's humpback whale habitat definition for the Sanctuary was developed to be consistent with those habitat definitions of the MMPA and the ESA. At this time, humpback whale habitat is based on known whale distributions and on those activities and behaviors that occur in these areas. More scientific research is needed to investigate those specific chemical, physical, and biological components of the marine environment that are truly an important or necessary component for humpback whales before a more precise definition can be proposed. This is also the primary reason the Sanctuary is relying on, and only supplementing, other authorities that regulate discharges and alteration of seabed activities.

As previously noted in an earlier response, the Hawaii Sanctuary is currently developing MOUs with relevant Federal and State agencies to more clearly define the types of permits the Sanctuary

would review and specific procedures for Sanctuary review and comment. The draft MOUs are included in Appendix E of the FEIS/MP.

### **Regulatory Alternatives**

**27. Comment:** New regulations are not needed and NOAA should focus on research and education only.

**Response:** NOAA disagrees. Resource protection is the primary goal of the National Marine Sanctuary Program and NOAA, as a co-manager in partnership with other Federal and State agencies, must be able to provide adequate protection for those resources. NOAA has determined that a national marine sanctuary must have some minimum level of regulation as part of a Sanctuary's management regime, primarily to protect Sanctuary resources. As detailed in earlier responses, NOAA explained why additional protection is needed for humpback whales and their habitat, and how essentially incorporating certain existing regulations into the Sanctuary management regime adds more protection. By having no direct role or authority to manage resources of the Sanctuary, NOAA would not be able to fulfill the responsibilities imposed by Congress in the HINMSA to comprehensively manage and protect the Sanctuary and its primary resources, the humpback whale and their habitat.

Furthermore, NOAA would be constrained in its ability to expend Sanctuary resources to enhance enforcement of these existing regulations if it did not, at a minimum, incorporate certain existing restrictions as Sanctuary regulations. Such enhanced enforcement is an integral component of the Sanctuary management regime's protective measures, and is consistent with the overall recommendations contained in the Hawaii Ocean Resources Management Plan (ORMP).

Like research and education, regulation and enforcement are management tools necessary to protect Sanctuary resources. Further, additional Sanctuary resources could be wisely spent to enhance existing enforcement efforts by NMFS, the State Department of Health (DOH), or DLNR. Such enhancement could be in the form of funding for educational materials about what protective regulations currently exist for the humpback whale and its habitat, for convening workshops for ocean users to discuss enforcement activities, or for funding research to determine adequacy of enforcement actions. Furthermore, the Sanctuary Program is examining the feasibility of funding additional monitoring or enforcement positions within DOH and DLNR.

**28. Comment:** NOAA should support compliance with existing regulations.

**Response:** NOAA agrees, and has identified this alternative as the preferred regulatory alternative. NOAA believes this regulatory alternative will best allow the Sanctuary to fulfill its responsibilities to protect Sanctuary resources without unnecessarily duplicating existing Federal and State agency rules and regulations that provide protection (directly or indirectly) to humpback whales or their habitat. This alternative also addresses the concerns raised regarding additional Sanctuary regulations and permits. The Sanctuary regulations have no requirements to obtain separate Sanctuary permits to conduct otherwise prohibited activities.

**29. Comment:** NOAA should not supplement existing regulations because there is a real potential for future and more stringent regulations, and for higher fees, fines, and penalties.

**Response:** NOAA disagrees. The final Sanctuary regulations are limited in scope to essentially incorporating those existing Federal and State regulations that provide protection to the humpback whale and its habitat. It is impossible for NOAA to predict whether new regulations will ever be needed or if they will be more stringent. The procedures for issuing new regulations, however, will involve broad public input and gubernatorial review (see response #24).



NOAA has never proposed any mandatory user fees for the Sanctuary, so there will be no added fees for marine users other than any fees that are already being assessed by other Federal, State, and county agencies. Further, in 1996, the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the sanctuary or any use of the Sanctuary or its resources.

To alleviate the public's concern that any violation of a Sanctuary regulation will result in the assessment of the maximum \$ 100,000 civil penalty, NOAA's Office of General Counsel is developing a civil penalty schedule for the Sanctuary, which will be made publicly available. The civil penalty schedule will identify the ranges of fines that could be assessed for violating Sanctuary regulations, taking into account such factors as number of prior violations and the severity or type of violation.

**30. Comment:** NOAA should adopt comprehensive regulations to protect the humpback whale and its habitat. Since the MMPA and ESA are currently being watered down, the Sanctuary should have independent regulations to provide supplemental protection.

**Response:** While NOAA agrees that a complete suite of independent Sanctuary regulations and permits may provide greater protection for humpback whales, it also recognizes the concerns raised by other Federal, State, and county agencies and marine users for duplicative laws and permitting processes. Because this Sanctuary protects the humpback whale and its habitat, already protected by other Federal and State authority NOAA has attempted to craft a resource protection plan that does not add unnecessary regulation, permits, or time requirements to an already complicated and overburdened system. As such, NOAA believes that working cooperatively with other agencies will best allow NOAA to achieve its limited resource protection goals while minimizing its impact on other agencies and Sanctuary users. If significant changes to existing authorities occur, NOAA may re-evaluate the Sanctuary regulations to determine whether they should be amended.

**31. Comment:** Any Sanctuary regulatory alternative (alternatives "4," "5," and "6") that allows the Sanctuary to issue independent permits is good as long as the logistics of permit review are maintained and the whales are actually getting adequate attention and protection.

**Response:** Permits only provide additional protection for resources if the permit review procedures are followed, monitored, and evaluated over time. Throughout this process, NOAA repeatedly received comments and information from Federal, State, and county agencies and the general public that Hawaii already has too many separate permit requirements and that the real problems lie in monitoring and enforcing violations of existing permits and regulations. As the majority of the Sanctuary lies in State waters and because NOAA is essentially only incorporating existing prohibitions and restrictions as Sanctuary regulations, NOAA is not adding any additional Sanctuary permit requirements, but will work within the existing permit review processes to ensure that humpback whales and their habitat are considered and that adequate monitoring and enforcement of these permits occurs.

**32. Comment:** NOAA should adopt strict regulations on marine users and activities to protect humpback whales and their habitat so that it has direct authority to provide more protection for humpback whales and a greater ability to prevent those actions that do harm humpback whales or their habitat.

**Response:** NOAA disagrees. This regulatory alternative is not presently justified by the available data concerning impacts to humpback whales or their habitat.

**33. Comment:** National marine sanctuaries should entail ecosystem based management. NOAA should issue regulations to protect the ecosystem so that it can address the true resource management needs in Hawaii.

**Response:** NOAA does not agree that all marine resources should be included in the Sanctuary and that comprehensive regulations for ecosystem management be implemented at this time. NOAA is required by the HINMSA to identify other areas and ecosystems of national significance for possible inclusion in the Sanctuary. NOAA agrees that an ecosystem based Sanctuary should be given more consideration, and has detailed a process in Part V(c) of the final Management Plan (Sanctuary Resources), that will involve substantial input from the SAC, other agencies, and members of the public prior to including additional marine resources or ecosystems. This process will clearly identify and clarify what, if any, such resources should be included in the Sanctuary and what role the Sanctuary should take in their management and protection.

### FISHING

**34. Comment:** The Sanctuary will restrict fishing in Hawaii.

**Response:** NOAA disagrees. The proposed management plan and regulations for the Sanctuary did not include the regulation of fishing activities. The final management plan and regulations have not changed. Moreover, fishing is not included as an activity listed in the scope of activities in the Designation Document as being subject to regulation. Thus, any regulation of fishing would constitute a change in the term of the designation, as contained in the Designation Document for the Sanctuary, for which the Secretary of Commerce must follow the applicable requirements of section 304 of the NMSA. Such requirements include providing the Western Pacific Regional Fishery Management Council (WESPAC) with the opportunity to determine if fishing regulations are necessary and if so, to draft such regulations for the Sanctuary. NOAA would also consult with the State and the SAC, as well as the fishing industry to determine an appropriate course of action to address concerns over impacts to Sanctuary resources from fishing activities. Further, NOAA would be required to solicit public comments, conduct at least one public hearing, and prepare a Supplemental EIS. Finally, the Governor of Hawaii would have the ability to review and veto the amendment to the Designation Document and new Sanctuary regulation before it can take effect in State waters.

All fishing activities in Federal waters are managed by WESPAC and NMFS, and in State waters by the Hawaii Department of Land and Natural Resources (DLNR). There is little evidence to indicate that humpback whales extensively feed while in Hawaiian waters (though opportunistic feeding may occur). As such, whales and fishermen do not extensively interact, or at least, at a level necessitating the creation of Sanctuary regulations governing fishing activities. While fishermen, as well as other marine users, are subject to the existing NMFS regulations prohibiting approaches closer than 100-yards, current enforcement data confirms this relatively low level of disturbance as fishermen have never been cited for harassing a whale in Hawaii. In fact, most fishermen fish in areas that do not have high whale concentrations because of claims that whales scare the fish away.

The Hawaii Sanctuary recognizes the importance of fishing for livelihood and enjoyment in Hawaii. Additionally, the Sanctuary recognizes the importance of protecting Native Hawaiian fishing and gathering rights and will work to ensure these are not unnecessarily impacted by new regulations.

**35. Comment:** The Florida Keys National Marine Sanctuary is proposing to have replenishment zones and that will restrict fishing -- Hawaii will be next.

**Response:** Each of the 12 National Marine Sanctuaries protects different marine resources and requires a different set of management tools to protect those resources, especially if they are developed to complement existing Federal, State, and local agencies. The Florida Keys National Marine Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary are very different types of sanctuaries, and as such, have very different management regimes. The Florida Keys Sanctuary protects the entire ecosystem, from seagrass beds to sandy bottoms to coral reefs. The Florida Keys National Marine Sanctuary and Protection Act required NOAA to consider zoning as a management tool for that sanctuary and, consequently, NOAA is proposing a zoning approach to resource protection, including certain zones that restrict fishing activities. NOAA is not proposing a zoning approach for the Hawaii Sanctuary, nor is it proposing to regulate fishing (see response # 34). Further, for any new regulation, including zoning restrictions, the Governor of Hawaii will have the ability to review and approve such regulation before it can take effect in State waters.

#### ENFORCEMENT AND PENALTIES

**36. Comment:** Civil penalties implies an "all or nothing" approach to enforcement. The potential economic consequences of scaring boaters with excessive fines should be noted. The fine structure should be expanded to include degrees of violations, both intentional and unintentional. The inadvertent accident of a well-meaning citizen should not be the grounds for a severe penalty. Who will develop the penalty structure? What public review process will the penalty structure go through. The \$100,000 maximum potential fine is scary to ocean users. The Sanctuary needs to clarify what maximum fines are for certain types of violations.

**Response:** The civil penalty section of the Hawaii Sanctuary regulations (§922.186) describes the maximum statutory civil penalty, \$100,000, that can legally be assessed for a violation of the NMSA, HINMSA, or any regulation or permit issued under those laws. A civil penalty schedule for the Sanctuary with recommended minimum and maximum penalties will be developed by the NOAA's Office of General Counsel for Enforcement and Litigation with input from the Office of Law Enforcement, in consultation with the Sanctuary program. The schedule will set forth a range of civil penalties that could be assessed for a violation of each Sanctuary prohibition, taking into account aggravating and mitigating factors such as prior violations and the severity of the violation. The civil penalty schedule will be made publicly available and will be similar to other penalty schedules that are presently available for other sanctuary sites (e.g., Key Largo and Looe Key). This schedule should alleviate concerns over the maximum potential penalty being assessed for minor infractions of the law.

Penalties for regulations established under the NMSA are created under civil law and therefore differ from some of those established under other Federal/State jurisdictions within the Sanctuary (those established under criminal law). This will have both positive environmental benefits and overall positive socioeconomic benefits for the Sanctuary. The resources of the Sanctuary will receive a greater level of protection by providing civil authority to other agencies through cross-deputization. Enforcement of regulations is best facilitated by agencies cross deputizing to enforce civil penalties.

Civil authority and coordinated enforcement under the NMSA have positive socioeconomic impacts on society in general in that there are cost savings to the public when agencies can share authorities and combine human and material resources. The Sanctuary regulations provide supplemental civil penalty options. In some cases, civil may be more appropriate than criminal. In some cases, use

of both civil and criminal may be appropriate. The resources can be better protected when there are more options for individuals enforcing the regulations. This, in turn, should lead to greater environmental and socio-economic benefits.

Civil authority lends itself more freely to an educational and interpretive approach to enforcement of regulations in National Marine Sanctuaries. Simply the message that something is a Sanctuary violation is all that is needed to achieve compliance from the vast majority of Sanctuary users. This concept underscores one of the most important goals of a Sanctuary enforcement program -- to obtain through education, voluntary compliance with regulations protecting (directly and indirectly) humpback whales and their habitat.

Many commenters have expressed concern about the discretion of enforcement officers in handling violations. Such discretion is applied on a case-by-case basis and, as a result, most violations are addressed through written or verbal warnings. Civil penalties are recommended by the NOAA-GC enforcement attorney upon completion of an investigation by the enforcement officer and review of the case specifics, and will be guided by the Sanctuary civil penalty schedule.

**37. Comment:** The Sanctuary brings the added potential for people to get their vessels seized.

**Response:** In addition to vessel seizure provisions contained within the ESA, the MMPA, and other fishery, customs, and boater laws, the NMSA also contains provisions that authorize vessel seizure in connection with or as a result of any violation of the NMSA or the implementing regulations for the Hawaii Sanctuary. However, it is unlikely that NOAA would seize someone's vessel for violating the humpback whale approach and harassment regulations unless seizure is necessary because the violation was particularly egregious, or if there was a risk the violator intended to leave Hawaiian waters.

**38. Comment:** A greater enforcement presence is not justified in the Draft EIS/MP.

**Response:** NOAA disagrees. Throughout the scoping and public meetings, the issue of enforcement was raised repeatedly. Many individuals noted that the existing laws protecting humpback whales and their habitat were adequate, but that the enforcement of those laws was insufficient. With respect to the notion of enhanced enforcement, many factors relating to marine enforcement in Hawaii changed during the development of the Draft EIS/MP. First, faced with a fiscal crisis, the State of Hawaii eliminated their Marine Patrol division from within the Department of Public Safety. Though 18 of the 43 enforcement personnel positions have been transferred to DLNR, there has been a net loss of 25 enforcement personnel throughout the State. In addition, the NMFS Office of Enforcement (NMFS-OE) has cut the number of enforcement personnel in Hawaii to three officers. This past year, NMFS-OE, faced with budget and staffing shortfalls, eliminated their presence on Maui during the whale season. This reduction further hampers NMFS's ability to adequately enforce ESA and MMPA measures. The ability of these existing laws to continue to protect the endangered humpback whale and its habitat is greatly compromised when enforcement is reduced to such a great extent. NOAA believes that the Sanctuary may provide a mechanism to leverage more resources for increasing marine enforcement in Hawaii closer to the level that existed prior to the budget cuts at both the State and Federal levels. Further, NOAA can provide for coordination among the remaining enforcement entities to more effectively and efficiently utilize the limited resources.

**39. Comment:** Since user fees, penalties, and fines collected under the Hawaii Sanctuary are credited back to the Sanctuary program, there is more incentive for Sanctuary management to enhance revenues through enforcement actions. The general public is afraid of overzealous officers out to make money for the Program.

**Response:** NOAA does not view civil penalties as a method to enhance appropriations. The National Marine Sanctuary Program is developing new means of revenue enhancement, including licensing merchandise, soliciting donations, and other voluntary methods. The Program's philosophy is that such measures are much more effective than attempting to increase program funding through increased enforcement action and penalties. The authority to retain civil penalties for use in managing and improving the Sanctuary ensures that monies obtained for violations of the HINMSA, NMSA, or Sanctuary regulations may be used directly for further educational outreach and research efforts, rather than being returned to the U.S. Treasury. Further, the Sanctuary Program in Hawaii will not have its own independent enforcement presence. Enforcement of Sanctuary violations will be carried out through NMFS-OE, a separate entity within NOAA. Consequently, any perception that NMFS-OE would carry out enforcement in order to increase Sanctuary Program funding should be minimal.

**40. Comment:** The Sanctuary should be used for research and education only -- not to enforce existing regulations.

**Response:** NOAA disagrees. Like research and education, regulation and enforcement are management tools necessary to protect Sanctuary resources. Further, additional Sanctuary resources could be wisely spent to enhance existing enforcement efforts by NMFS, the State Department of Health (DOH), or DLNR (see response #38). Such enhancement could be in the form of funding for educational materials about what protective regulations currently exist for the humpback whale and its habitat, for convening workshops for ocean users to discuss enforcement activities, or for funding research to determine adequacy of enforcement actions. Furthermore, the Sanctuary is examining the feasibility of funding additional monitoring or enforcement positions within DOH and DLNR.

**41. Comment:** Local boat operators are responsible for self-policing. There is no need for additional enforcement since there are few interaction problems.

**Response:** NOAA recognizes that Hawaii's boat operators are some of the most responsible in the nation, if not the world. And, based on the limited number of citations issued by NMFS over the past few years, there appears to be but a few interaction problems between vessels and humpback whales in Hawaii's waters. However, that self policing results in fewer violations does not necessarily obviate the need for additional enforcement. Moreover, the Sanctuary is also responsible for protecting the humpback whale's habitat. As such, additional enforcement of habitat regulations will facilitate the efforts of local State enforcement agencies such as DOH or DLNR. Such an increase in enforcement is also called for in the ORMP, which encompasses the entire marine ecosystem of the main Hawaiian Islands, and claims that the enforcement of existing regulations is one of the greatest resource management needs (see response #100).

#### MANAGEMENT AND ADMINISTRATION/ SCOPE OF SANCTUARY RESOURCES

**42. Comment:** Sanctuary should be administered on a year-round basis.

**Response:** NOAA agrees. Although humpback whales are only present in Hawaii's waters for about six months each year, their habitat and threats to their habitat need to be addressed on a year-round basis. In addition, NOAA believes that long-term habitat monitoring, education, outreach, and coordination with other agencies needs to happen on a year-round basis to ensure comprehensive resource protection.

**43. Comment:** If the final Sanctuary boundary includes areas on all islands, then each of the islands should have a contact person so that all citizens have equal access to Sanctuary resources and management.

**Response:** NOAA's goal is to have Sanctuary liaisons or contacts on all the major islands within the Sanctuary's boundary. In addition, the SAC has representatives from all the counties and nearly every island. The SAC will be encouraged to coordinate various user groups and interests to ensure that local concerns are discussed and addressed (see responses #53-55).

**44. Comment:** NOAA should have a mixture of Federal and State agencies and private sector citizens manage the Sanctuary.

**Response:** NOAA believes that the day-to-day management of a Sanctuary should be made by the on-site Federal Sanctuary Manager and his or her staff. To allow for public and agency input into the management of the site, however, NOAA has created the SAC. The SAC provides advice and recommendations to the Sanctuary Manager and NOAA on the management of the site, and is a mixture of Federal, State, and nongovernmental citizens, representing a number of varied and diverse interests in Hawaii. The SAC provides recommendations on various management issues, including recommendations on education, research, regulations, enforcement, and other funding priorities. Additionally, SAC members may form working groups with island representatives and other members of the public to keep apprised of local issues and concerns regarding the Sanctuary. All SAC meetings are open to the public and the public may participate in agenda items or ask to have certain issues addressed if approved ahead of time by the SAC Chair and the Sanctuary Manager (see responses #53-55).

**45. Comment:** The State of Hawaii or county governments should manage the Sanctuary.

**Response:** The proposed boundaries of the Hawaii Sanctuary encompass waters of both Federal (beyond three nautical miles) and State (shoreline to three nautical miles) jurisdiction. As such, it is imperative that the Sanctuary have sufficient management and regulatory jurisdiction over all of these waters to ensure that Sanctuary resources are fully protected. The counties or the State do not have jurisdiction to manage Federal waters and as such, the Sanctuary is best managed through a single Federal agency; NOAA. The Hawaii Sanctuary, however, acknowledges the existing Federal and State agencies that have management jurisdiction in or near the Sanctuary, and is developing cooperative partnerships and MOUs to clarify the role of each agency vis a vis the Sanctuary to enhance coordination (see response #20). In addition, the Sanctuary Manager may obtain advice and recommendations from the 25 member SAC on the management of the Sanctuary (see responses #53-55).

**46. Comment:** There is fear that the Sanctuary will be managed or at least major decisions affecting local sanctuaries will originate from Washington D.C. Local citizens do not have any control over these decisions.

**Response:** Each individual National Marine Sanctuary is managed by the on-site Sanctuary Manager. The on-site Manager and other staff make day-to-day decisions concerning planning, managing, implementing, and funding site priorities. The on-site Manager may obtain advice and recommendations from the 25 member SAC on management of the site, including research, education, regulations, enforcement, and funding priorities. The Hawaii Sanctuary is part of a national program, and certain policy issues are reviewed by the headquarters office to ensure consistency among the various sites, when appropriate. The headquarters office also reviews policies generated from the sites and provides technical assistance when possible. Certain program-wide policies are also developed at headquarters, but with extensive input from the individual sanctuary managers. Funding comes from the headquarters office, based on the recommendations of the individual site and regional managers.

**47. Comment:** How will the Sanctuary accomplish comprehensive protection and management of the humpback whales and their habitat.

**Response:** NOAA intends to comprehensively manage and protect humpback whales primarily through coordination with other agencies and the public. The Sanctuary is proposing to essentially incorporate certain existing regulations that protect humpback whales and their habitat into the Sanctuary Management Plan. The Sanctuary is working with relevant Federal and State agencies to develop MOUs to clarify how the Sanctuary will interface with their permit review processes to ensure that humpback whales and their habitat are being adequately considered. In addition, the Sanctuary will work closely with the SAC, and those working groups and subcommittees set up under the SAC, to identify concerns and policy issues and to coordinate the implementation of the Sanctuary Management Plan. The SAC, and thus the Sanctuary, will evolve into being a true public and agency sounding board where issues can be raised and solutions discussed in an open, structured forum. This forum will become an effective tool to facilitate an ongoing dialogue between the existing resource management agencies and the public, leading to a resource management that is responsive to the public and agency needs.

**48. Comment:** The Hawaii Sanctuary is the only single-species sanctuary in the national system. This is not in accordance with the mission of the program and it sets a bad precedent.

**Response:** While the Hawaii Humpback Whale National Marine Sanctuary is the only National Marine Sanctuary focused solely on a single, biological species, it is not the only single resource Sanctuary in the national system. The U.S.S. *Monitor* National Marine Sanctuary was established solely to protect the wreck of the famous Civil War Ironclad.

In addition, the National Marine Sanctuary Program was established to be flexible in its approach to ocean management. There is no one management approach or standard set of regulations that fits all sites. NOAA develops site specific management plans that are based on the uniqueness of each sanctuary area, and on the area's existing management entities. The Hawaii Sanctuary clearly fits the resource protection and management mandate and mission of the Program. NOAA does not believe that the Hawaii Sanctuary has set a negative precedent for the Program, but that it merely represents NOAA's commitment to developing site-specific management plans tailored to the needs of the local community and its resources.

Furthermore, while the Congressional mandate for the Sanctuary is to focus on the humpback whale and its habitat, it also allows for the identification of other resources of national significance for possible inclusion the Sanctuary. This creates the opportunity for a more comprehensive Sanctuary, and NOAA has developed a process in the Part V of the FEIS/MP to address this issue.

**49. Comment:** The ocean is an interrelated system. Focusing on one species is not cost efficient or what the State needs. A humpback whale sanctuary does not address other, more important and pressing marine issues in Hawaii as it takes away attention from these resources. Humpback whales are only seasonal visitors to Hawaii and are not representative of Hawaii's unique marine ecosystem.

**Response:** NOAA agrees that all chemical, physical, and biological components of the marine environment are ultimately interrelated, and that a healthy marine environment is needed for all organisms to live and reproduce. The qualities of the marine habitat that are required to support the humpback whale are also needed to sustain healthy fish stocks, coral reef ecosystems, and human recreation. NOAA believes that the knowledge and research gained from investigating components of the humpback whale's habitat will ultimately help other resource managers in their efforts to protect and sustain other marine environments. Any resource protection measures that



improve the habitat for the humpback whale will subsequently improve the habitat for other organisms living there as well.

NOAA further believes that a sanctuary that focuses on a particular species and its habitat does not divert attention away from other marine issues, but effectively creates a forum in which these other issues can be addressed. The Sanctuary will ultimately increase local resident and visitor awareness of not only humpback whales, but also of Hawaii's unique marine environment. In its efforts to ensure protection of the humpback whale and its habitat, the Sanctuary Program will work with existing agencies and groups to identify problems and issues that affect the entire marine ecosystem. This ecosystem will benefit from our increased knowledge and research, and better coordinated management. For example, the Hawaii Sanctuary Program has co-funded a project designed to better address the water quality issues and the algal blooms off of Maui as well as to develop educational material designed to teach people about Hawaii's unique marine habitat. Additionally, NOAA has included a public process in the Sanctuary Management Plan to identify, and possibly include, other resources and ecosystems of national significance in the Sanctuary (see response #50).

**50. Comment:** NOAA should include other marine species such as sea turtles, Hawaiian monk seals, coral reefs, fish, seabirds, and other endangered species as resources of the Sanctuary. NOAA should adopt an ecosystem-based sanctuary to address true resource management needs in Hawaii.

**Response:** NOAA has included in the Final Management Plan (Part V) a process for identifying, and possibly including in the Sanctuary, other resources and ecosystems of national significance. The addition of other resources and ecosystems will require a lengthy public and SAC review process. Should this public process identify additional resources and management measures to include within the Sanctuary's management purview, the Sanctuary would need to develop a Supplemental EIS/MP, and hold additional public hearings. Further, the Governor of Hawaii would have the authority to decide whether those resources and associated management measures (e.g., regulations) would be included in State waters of the Sanctuary.

**51. Comment:** Water quality is a major management concern in Hawaii. The Sanctuary should protect nearshore and coastal habitats to identify water quality issues and other related management problems (coral reef and fish declines). The Sanctuary should approach water quality monitoring of non-point source pollution in a comprehensive manner and in cooperation with existing Federal, State, county, and community efforts.

**Response:** NOAA agrees. The Sanctuary's Management Plan was developed to provide protection for humpback whales and their habitat. The preferred regulatory alternative provides supplemental protection for the whale's habitat and the Sanctuary will review and comment on permit applications that may impact water quality. In addition, the boundary of the Sanctuary extends from the shoreline out to the 100-fathom isobath and includes most nearshore and coastal areas. Coastal waters comprise an important component of the humpback whale's habitat, especially newborn calves, and the Sanctuary will work with Federal, State, and county agencies and the general public to ensure this habitat can sustain humpback whales and other marine resources. The Sanctuary will work with relevant agencies and marine user groups to develop and/or supplement education, research, long-term monitoring, and enforcement programs so that water quality is maintained or improved. As an example, the Sanctuary has worked with DOH and Maui County to co-sponsor a much needed water quality monitoring project for the entire island of Maui. This project utilizes volunteer citizens through the county and was a priority for both the West Maui Watershed project, as well as the State of Hawaii, DOH. (See responses #18-19, #22, and #90.)



**52. Comment:** Depletion of bottomfish is a more serious problem than humpback whales.

**Response:** NOAA acknowledges that other marine resources in Hawaii are facing depletion or are damaged and need management attention. The Sanctuary will support research and long-term monitoring on the humpback whales' habitat which in turn may be used by other resource management agencies. Fisheries management is not, however, a component of the Sanctuary's management. At this time, bottomfish depletion is an issue that is better addressed by WESPAC and DLNR.

#### SANCTUARY ADVISORY COUNCIL (SAC)

**53. Comment:** NOAA should establish a formal advisory group to help develop the Final Management Plan and to help manage the site once the Final Plan is approved. This group should have real-decision making authority.

**Response:** NOAA has established a Sanctuary Advisory Council (SAC) to provide advice and recommendations to the Sanctuary Manager and NOAA on the continued development and management of the site. In February 1996, NOAA solicited names for membership to the SAC. Through a lengthy process outlined in its charter, the SAC was selected and has been meeting since March 1996 to provide advice to SRD on comments received on the Draft EIS/MP. The SAC has formed subcommittees to focus on issues such as administration, regulations, and the Sanctuary's boundary. The SAC is expected to also form working groups to address research, education, and county-specific concerns. NOAA values this advice and would not deviate from it without good reason. However, the SAC is an advisory body only and has no authority to independently operate, or make management decisions. NOAA must ultimately be responsible for management decisions and has final decision-making authority.

**54. Comment:** NOAA should establish a community-based advisory panel within each county.

**Response:** In response to public comments, and to facilitate more dialogue with the community, representatives from each of Hawaii's four counties sit on the SAC and will be encouraged to set up county-specific working groups that will meet in each of the four counties.

**55. Comment:** The SAC should have adequate representation of the different types of ocean users. Include commercial transport industry representative as permanent member of SAC.

**Response:** The Hawaii SAC consists of 25 members, including ten government and 15 non-government representatives. NOAA has limited membership to 25 to ensure the SAC is manageable and provides meaningful advice. The 15 non-government seats include representatives of the following groups or interests: Honolulu, Kauai, Maui and Hawaii counties; conservation; fishing; whale watching; business/commerce; education; tourism; ocean recreation; research; Native Hawaiian; and two citizen-at-large seats. The Sanctuary Program realizes that there are many more agencies and individuals who would like to be a part of the SAC, but believes there is a broad representation of the major interests and Sanctuary users. Each of the group or interest representatives will be encouraged to dialogue with other members of their community.

NOAA has attempted to facilitate dialogue with the commercial transport industry by replacing the Department of Education seat (which was declined) with a Department of Transportation seat. At this time the 15 non-government seats are already occupied. This does not preclude interested members of the commercial shipping industry, for example, or other members of the public from participating in SAC meetings (all meetings are open to the public) or submitting to the Chair of the

SAC or Sanctuary Manager Sanctuary related issues that they would like raised and discussed at meetings.

**56. Comment:** Oppose the SAC since it has no real management power and is only a rubber stamp body.

**Response:** NOAA views the SAC as a very important component of the Sanctuary. Established pursuant to Section 315 of the NMSA, the SAC is a formal body of the Hawaii Sanctuary that is officially authorized to provide advice and recommendations to the Sanctuary Manager and NOAA. The SAC functions as a forum that brings together various marine user groups and resource management agencies to discuss various local issues concerning humpback whales and their habitat. NOAA weighs the SAC recommendations very carefully and considers their input crucial to the local on-site Manager and NOAA. Although the SAC normally will interact with the on-site Manager, results from all the meetings are relayed to the headquarters office to ensure that local concerns are considered at that level as well.

The Hawaii SAC members take their roles seriously, as evidenced by their level of involvement and participation, and their formation of working groups. Community involvement is critical to the success of the National Marine Sanctuary Program, which is a program that actively solicits community input and recommendations as part of the continuous management process. Sanctuary Advisory Councils do not rubber stamp NOAA policy, and in fact, provide valuable input in helping NOAA shape policies before they are finalized and implemented (see response #53). Those sanctuaries with established Sanctuary Advisory Councils have greatly benefited from their assistance.

## RESEARCH

**57. Comment:** Despite years of research, neither NOAA nor any of the whale researchers have been able to tell the public exactly how many humpback whales are in Hawaii.

**Response:** Determining the exact number of humpback whales in Hawaii is a difficult task for a number of reasons. First, humpback whales are not static animals: they spend most of their time underwater, they continually swim to new locations, they are distributed over the entire main Hawaiian Islands making individual identification difficult (and expensive), and there is some mixing of the Hawaii sub-population with the Mexico and Japan humpback whale sub-populations. Second, there has been relatively little government research monies available to conduct the needed statewide survey efforts. Over the years, however, many different private research teams have managed to obtain funding to study humpback whales. These teams have used a variety of different methods to estimate the whale population, which has made data comparison difficult. As a result, researchers can only provide an estimate of the Hawaii humpback whale population. In the last five years, there have been several statewide collaborative efforts to study the whale population dynamics. These studies will need to continue indefinitely so that researchers and resource managers better understand the population dynamics in Hawaii.

Although exact figures for Hawaii's humpback whale population are not available, researchers have indicated that the number of whales wintering in Hawaii has been increasing over the last ten to fifteen years. At present, the estimated population of humpback whales in Hawaii ranges between 1,500 and 3,000. Better estimates as well as different population transecting techniques, however, will provide improved understanding of how many whales are coming to Hawaii each year. Part of these population studies have and will be funded by the Hawaii Sanctuary.

**58. Comment:** Scientific evidence suggests that the humpback whale population is recovering. If so, why is there a need for a humpback whale Sanctuary?

**Response:** NMFS, and many researchers, have indicated that the humpback whale population is showing initial signs of recovery since the 1960s when commercial whaling reduced their numbers in the central North Pacific to about 1,000 animals. Recent estimates put the current central North Pacific population (those that winter in Hawaii) in the range between 1,500 and 3,000 whales (see response #57). In order to be considered recovered, NMFS has determined that the population will need to reach approximately 9,000 whales before the central North Pacific Stock of humpback whales can be considered for removal from the endangered species list.

In this regard, there needs to be more research conducted on humpback whale population dynamics (population size, distribution, birth, survivorship and mortality rates, and degree of mixing with other populations) before conclusive statements can be made about their actual rate of recovery. The California gray whale, also thought to number as few as 1,000 whales after commercial whaling, was recently taken off the endangered species list after its population was estimated to be about 10,000 animals. Since MMPA and ESA protection measures were at a minimum for both species, and even more stringent for Hawaii's humpbacks because of NMFS approach regulations, there is a question as to why the gray whale population was able to increase nearly eight times faster than the humpback whale population. This question, and many others, still remain to be answered. There is no one agency or research group that has all the necessary resources to answer such questions or to even help coordinate such efforts. The Sanctuary, however, through its research and management working groups, can help provide a forum and the resources necessary for researchers to focus on management related questions. In addition to research, the Sanctuary will work with existing agencies and private sector organizations to supplement education and enforcement programs, and to increase dialogue between the public and the resource management agencies. The Sanctuary provides a coordinating role primarily to protect the humpback whale in the long-term.

Unlike the ESA, recovery of the humpback whale is not the end goal of the Sanctuary. The Sanctuary was designated to provide long-term protection of humpback whales and their habitat for future generations to enjoy and the Sanctuary will serve its purpose long after the humpback is taken off the endangered species list.

**59. Comment:** The research presented in the DEIS/MP is biased and out of date. The information does not justify the boundary selections. NOAA should update the sections on humpback whales.

**Response:** NOAA has thoroughly investigated the existing published and unpublished research concerning humpback whales in Hawaii, including the most up-to-date information available. When possible, NOAA has referenced and included the results of research published in peer reviewed scientific journals. Much of the research conducted in the last few years, however, remains unpublished in scientific journals. As a result, NOAA has made numerous efforts to bring Hawaii whale researchers and other marine mammal experts and resource managers together to discuss the current understanding and status of humpback whales and their habitat, and to identify future research needs. For example, NOAA has used this information as the basis for providing boundary alternatives and, in part, to select its preferred boundary (see responses #8 and #15). In response to public comments and to include the most updated information, NOAA will update and restructure the section on humpback whales in the Final EIS/MP [Part II(B)].

**60. Comment:** More research should be conducted before a Sanctuary is designated as there are too many unknowns.

**Response:** NOAA disagrees. There still are many unanswered questions that researchers and resource managers need answered before we can better understand the humpback whale's population dynamics and the effects of human activities on humpback whales. These efforts will require additional resources and coordination, one of the fundamental purposes of the Sanctuary. Resource managers need more management-related research to help them be responsive to the needs of both whales and humans. Hawaii's marine waters constitute one of the world's most important humpback whale reproductive habitats and is essential for the recovery and continued existence of this species. Research and long-term monitoring efforts are crucial elements of a comprehensive management program for this species since there is so much to learn. Congress has acknowledged the importance of these waters and has designated the Hawaii Sanctuary to ensure that research, long-term monitoring, education, and other resource protection programs are implemented and coordinated to protect the humpback whale for future generations.

**61. Comment:** There is no clear data as to what constitutes humpback whale habitat.

**Response:** NMFS and the research community have stated in past technical consultations that more research is needed to more clearly articulate the chemical, physical, and biological parameters that constitute humpback whale habitat in Hawaii. Research has shown that humpback whales can be found in certain areas in Hawaii year after year in high concentrations. These areas tend to be in waters less than 100-fathoms deep, though whales, especially single males, can be found in deeper waters. Mothers with calves tend to be found in shallower waters, often in the leeward areas of islands. Substrate may prove to be important for such activities as singing and sound transmission. Researchers have not found much evidence of whales feeding in Hawaii. All of these reports are consistent with other humpback whale wintering areas. The Sanctuary acknowledges that there is not conclusive data defining specific parameters of humpback whale habitat in Hawaii, but this will be one of the priority issues the Sanctuary will address through its research program. Despite these information gaps, NMFS and the researchers agree that water is a necessary component for the whale, and that the marine environment around the main Hawaiian waters is needed for breeding, calving, and nursing activities (see response #26).

**62. Comment:** NOAA should determine if fish or other potential food sources are a critical component of the humpback whale habitat in Hawaii.

**Response:** Humpback whales have been studied in both the Atlantic and Pacific Oceans, and in the northern and southern hemispheres. In general, the migration of whales is thought to represent a seasonal movement between subtropical or tropical breeding grounds and polar or subpolar waters, where intensive feeding occurs in the summer. Little evidence of feeding has been reported in the lower latitudes of the southern hemisphere, and only occasional feeding (fish and zooplankton) has been reported in low latitude areas of the northern hemisphere (Dominican Republic and Baja, Mexico). In Hawaii, there has been only a few reports of feeding: One researcher documented a vertical lunge (feeding behavior) by a subadult whale off Maui (Salden, 1989) and other people have reported feeding-like behaviors in the presence of fish. Based on the existing research data and after consulting with whale researchers, NOAA does not believe that these limited observances of opportunistic feeding in Hawaii necessarily make fish or other potential food sources a critical component of the whale's Hawaiian habitat (see responses #26, #34, and #61).

**63. Comment:** The Sanctuary should explain how fishing and research activities can impact whales.

**Response:** Humpback whales migrate to the Hawaiian Islands primarily to engage in breeding, calving, and nursing activities. Although opportunistic feeding has been observed, NMFS and other whale researchers have stated that this is not a common occurrence (see response #62). As such, whales are not likely to interfere with fishing gear, including lines, hooks, and nets (see response #34). Whale interactions with fishing activities is more of a concern in Alaska, where fishermen and whales directly compete for fish resources, and where whales become incidentally entangled in gear. There have only been a few reports of humpback whales interacting with fishing gear or nets in Hawaii.

Research impacts on whales result primarily from vessel approach and harassment. Often, researchers need to get closer to humpback whales than the 100-yard approach limit allows. These researchers are required to get a research permit from NMFS. In deciding to issue the permit, NMFS will weigh the benefits associated with a particular research project, in terms of increasing our understanding and knowledge of the humpback whales, with those potential impacts resulting from harassment or injury to the whale. Some research may also require the scientists to take skin or tissue samples and require more intrusive techniques. NMFS permits contain terms and conditions in its permits to minimize the potential for harassment or injury.

**64. Comment:** NOAA has not provided a clear analysis of potential threats to the humpback whale. How can Sanctuary be justified if the data is inconclusive? There is no significant evidence that current human activities are negatively affecting humpback whale movement, breeding, or calving activities.

**Response:** NOAA has reviewed the existing scientific literature, and consulted with scientific experts concerning potential human impacts to humpback whales and their habitat. The scientific literature has shown that humpback whales can be directly impacted by physical disturbances (approaches and sound), and indirectly by habitat modifications (pollution, nearshore development, disturbing the seabed). There are a number of different human activities that can elicit physical responses (vessel approaches, overflight, acoustic sound) and a number of activities that can degrade the whales aquatic environment (discharges, dredging, construction, non-point source pollution). A summary of this information was presented in the DEIS/MP, and has been expanded and updated in the FEIS/MP.

In reviewing the scientific literature, NOAA found that there is a need for additional research to determine the degree of impact, if any, of specific human activities on individual whales or their population. This is especially true for the more indirect impacts associated with water quality and is one of the reasons supporting the designation of a Sanctuary in Hawaii. There are many different research and education needs that the Sanctuary will help existing agencies and organizations fill. The Sanctuary can also help coordinate activities and become a venue where the research community interacts with the resource managers and the general public. National Marine Sanctuaries are not necessarily designated because there is an imminent problem or significant threat that currently exists in the local ocean community. More often than not, National Marine Sanctuaries are created in areas with resources of outstanding national significance to ensure that these areas are comprehensively managed and protected for future generations to enjoy. As both the population of humpback whales and humans increase in Hawaii, so too will there be a need for better coordinated management and planning. It is possible that with advice from the SAC, the research community, and NMFS that the Hawaii Sanctuary can better identify what factors are favorable or are detrimental to the humpback whales and how to best manage human uses within the Sanctuary.

**65. Comment:** The Sanctuary should add information about the acoustic environment of whales and other potential sources of impacts on humpback whales. The Sanctuary-sponsored research and long-term monitoring programs should focus on potential human-related impacts to humpback whales and their habitat, including: whale displacement or disturbance caused by sound, human approaches and/or harassment of whales, direct collision by marine vessels, and pollutants and pathogens from coastal waste disposal, coastal runoff and development, and causes and consequences of a decline or changes in the ocean environment.

**Response:** NOAA has updated, clarified, and expanded the section describing humpback whales in Part II(B) of the Final Management Plan. This section includes more information about humpback whale distribution, population dynamics, habitat use, the acoustic environment of whales, and those known and potential impacts resulting from human activities, including sound. The research and long-term monitoring section of the Management Plan has also been reviewed and clarified to be responsive to management needs.

The Sanctuary will work with other Federal, State, and county agencies and the SAC to help develop annual research plans that identifies priorities. The SAC will be encouraged to form a research working group that will include members of the existing SAC and other researchers, to provide technical assistance and to develop recommendations to NOAA on research priorities and Sanctuary-sponsored research priorities.

NOAA has already undertaken efforts to develop community-based monitoring programs. The Hawaii Sanctuary is working with DOH and the West Maui Watershed Program to support a volunteer coastal water quality monitoring program for the island of Maui. Currently there are more than 30 beaches that are being monitored. The Maui water quality monitoring project has been renewed for a second year, based in part to the funding available from the Hawaii Sanctuary.

Projects like the water quality monitoring project that provide information on the habitat of the humpback whale will ultimately provide greater understanding of what water quality parameters are needed for the humpback whale's survival. NOAA acknowledges that many commenters stated that water quality is a major issue facing all ocean users in Hawaii. To that end, the Sanctuary program is committed to working closely and cooperatively with the existing agencies and community-based programs to ensure that Hawaii's marine environment remains healthy and can support a diverse assemblage of species and human uses.

**66. Comment:** The Sanctuary should play a leadership role in bringing together researchers working on humpback whales.

**Response:** NOAA agrees. A fundamental component of the Hawaii Sanctuary is to support management-related research and long-term monitoring efforts that increase our collective understanding and knowledge of humpback whales, their habitat, and those factors that may negatively or positively impact either one. The Sanctuary will not usurp or suppress ongoing research in the Sanctuary, but rather will provide a forum to bring these many different researchers and resource managers together to discuss humpback whales, knowledge gaps, research priorities, funding opportunities, and when possible, to initiate collaborative research efforts. The Sanctuary will use the expertise and diverse interests of the SAC and its research working group to foster dialogue and coordinate the diverse range of interests. In addition, the Sanctuary will also facilitate efforts to bring together researchers and other technical experts to enhance the collaborative knowledge foundation. For example, the Sanctuary co-sponsored a workshop with NMFS a "to assess research and other needs and opportunities related to humpback whale management in the Hawaiian Islands" in April 1995, that brought together over 75 researchers and resource managers. The Sanctuary will also strive to develop a worldwide database of humpback whale research data, accessible to as many people as possible.

**67. Comment:** All research and monitoring efforts should be benign, non-intrusive, non-invasive and be clearly necessary to protect the overall welfare of humpback whales.

**Response:** NOAA believes that humpback whale research should focus on management-related issues and be conducted with minimal impact to the whales. All researchers that intend to conduct research with 100-yards of a humpback whale must first obtain a research permit from NMFS. Both NMFS and the Sanctuary Program will review applications for permits to conduct humpback whale research in or near the Sanctuary, and if necessary, provide conditions to alleviate or mitigate potential impact to the whales or their habitat (see response #70).

**68. Comment:** What are the means for funding research?

**Response:** Research can be funded in any number of ways. Many researchers have been conducting research for years by creatively "finding" monies from any number of sources (grants, government agencies, non-profit foundations, donations, fund-raising, whale watching). This source of research money, however, is not stable and varies from year to year. In addition, any one source is usually insufficient to conduct the type of ongoing comprehensive statewide surveys needed to fully understand the humpback whale's population dynamics. Other agencies, such as NMFS, have historically provided limited funding opportunities through Congressional appropriations under the MMPA and ESA. These appropriations, however, are not targeted for humpback whales in Hawaii, and NMFS distributes its funding for research on other endangered species and marine mammals as well. The Hawaii Sanctuary brings additional Federal monies into Hawaii and provides the opportunity to leverage technical support and finances from other funding sources that are known to support research efforts in international and national marine protected areas.

**69. Comment:** The Sanctuary needs to ensure that funds are available to carry out research, otherwise the research plan will be ineffective.

**Response:** NOAA agrees and is committed to directly allocating a portion of the Hawaii Sanctuary budget toward supporting research and long-term monitoring projects in the Sanctuary. The amount of funding for research will be related to the annual Congressional appropriation for the Sanctuary program and the annual site budget. If direct Congressional appropriations are not sufficient to implement portions of the Management Plan, the Sanctuary will look toward leveraging additional funds from other agencies and foundations, and other voluntary revenue enhancement methods. Research and education are two of the major components of the Hawaii Sanctuary program and will therefore be priorities for the site. In addition, the SAC and its individual working groups will provide recommendations to NOAA for funding Sanctuary programs (education, research, and management). The Sanctuary Manager will factor in these considerations with the identified Sanctuary's priorities and the annual funding availability.

**70. Comment:** Legitimate scientists need protection from bureaucracies created to protect the humpback whale. There are too many hurdles for researchers to jump through and too many measures in research section.

**Response:** Any researcher intending to approach a humpback whale within 100-yards must obtain a research permit from NMFS pursuant to the MMPA. The Sanctuary is incorporating the NMFS approach regulations as part of the Sanctuary regulatory regime but will not require persons to obtain a separate Sanctuary research permit. The Sanctuary has developed a MOU with NMFS for reviewing applications for permits to conduct research within the Sanctuary. NMFS will remain the primary point of contact for researchers. All permit applications will be forwarded by NMFS to the Sanctuary Program for comments within the public review period. NMFS will continue to issue the permit, but with the Sanctuary Program's concerns incorporated. This Sanctuary review process will be "transparent" to the permit applicant and will not place additional

burdens or paperwork requirements on the applicant. One primary role of the Sanctuary is to facilitate and coordinate research, not hinder it.

#### EDUCATION

**71. Comment:** The Sanctuary education programs should focus on school education. There is not enough marine education in the schools today.

**Response:** Education is one of the main components of the Hawaii sanctuary. NOAA strongly believes that education at all ages is necessary to increase the local community's awareness and understanding of marine resources, and the need to sustain the environment for all users and persons that enjoy the marine environment. The Sanctuary is committed to working in partnership with existing education organizations and school districts to develop and implement needed marine education curricula and programs. The SAC will be encouraged to form an education working group. This working group will serve as a sounding board and will help to coordinate those efforts that are ongoing and to assist in developing new education programs as needed.

**72. Comment:** The Sanctuary is biased towards humpback whales and not the other resources and those human users who depend on the marine environment.

**Response:** The Hawaii sanctuary was designated by Congress primarily to protect humpback whales and their habitat, and to educate and interpret the relationship of the humpback whale to the Hawaiian Islands marine environment. NOAA was given a clear mandate to promote education among users of the Sanctuary and the general public not only about the conservation of humpback whales and their habitat, but also about other marine resources in Hawaii. The Sanctuary also recognizes that the Hawaiian Islands have a rich history that continues today for human use of the marine environment, including uses of Native Hawaiians customarily and traditionally exercised for subsistence, cultural, and religious purposes. The Sanctuary will include elements within the education section of the Management Plan aimed at increasing the general public's knowledge and understanding about the diverse human uses and traditions in Hawaii's marine environment.

**73. Comment:** The Sanctuary should include a review process in the development of its education program so that it clearly addresses Sanctuary objectives, contains appropriate content, and is unbiased.

**Response:** NOAA agrees. The SAC will be encouraged to form an education working group that includes those interested agencies, organizations, and individuals working on marine education programs. This working group will help provide advice and recommendations to the SAC, which will advise the Sanctuary on identifying, selecting, implementing, and funding Sanctuary education programs. In addition, the working group and SAC will be used to help the Sanctuary develop criteria and program standards for Sanctuary-sponsored education programs.

#### NATIVE HAWAIIAN

**74. Comment:** How will future Native Hawaiian sovereignty rights be impacted by the Sanctuary?

**Response:** The Hawaii Sanctuary is essentially incorporating certain existing restrictions into the Sanctuary Management regime. It is not adding any new restrictions or prohibitions other



than those already in place, and will not require or issue independent Sanctuary permits or have approval authority over other existing authorities. The Hawaii Sanctuary is committed to recognizing Native Hawaiian uses. One purpose of the HINMSA is to facilitate uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural and religious purposes consistent with the primary objective of the protection of humpback whales and their habitat. Few other Federal laws and programs have language specifically recognizing Native Hawaiian uses.

The issue of Native Hawaiian Sovereignty rights in Hawaii is still being discussed and debated, and will remain unclear for at least the foreseeable future. NOAA will closely follow the Native Hawaiian Sovereignty movement as it develops and will strive to honor any new rights or privileges granted.

The SAC includes a Native Hawaiian representative to ensure that Native Hawaiian concerns and issues, as they pertain to the Sanctuary, are addressed. This representative will be encouraged to facilitate dialogue with other Native Hawaiian sovereignty groups to help the Sanctuary understand and recognize Native Hawaiian uses and rights as they concern the Sanctuary. This dialogue will continue well into the future and it is hoped the Sanctuary can work with the Native Hawaiian community to educate others about the unique aspects of Native Hawaiian culture and uses of the Sanctuary.

**75. Comment:** All submerged lands are ceded lands, held by the State in trust for Native Hawaiian people. The Federal Government has no jurisdiction over ceded lands. What changes will the Sanctuary impose on submerged/ceded lands?

**Response:** The establishment of the Sanctuary in no way conveys, or intends to convey, to NOAA any title or ownership of Hawaii's submerged lands. These lands, including those known as ceded lands, will continue to be held in trust by the State of Hawaii. The Sanctuary will only exist as a co-steward of the Sanctuary resources within the Sanctuary boundary. Should the status of the submerged lands change at some time in the future (i.e., the lands are conveyed to a sovereign Hawaiian nation), the Sanctuary will work with the appropriate entities to redefine its role if necessary.

**76. Comment:** Why does the DEIS/MP not address Native Hawaiian concerns?

**Response:** The DEIS/MP (pages 68-74) described various aspects of Native Hawaiian culture and uses of the marine environment as they relate to the Hawaii Sanctuary. NOAA has expanded and clarified this section in the FEIS/MP (see response #74).

**77. Comment:** Native Hawaiians have traditional fishing entitlements that the U.S. Government fails to recognize. Sanctuary should protect Native Hawaiian gathering and fishing rights by helping to restore coastal habitats and fisheries. How will the sanctuary be different from the other parts of the Federal Government? There is no trust and no reason to trust the Federal Government.

**Response:** The Hawaii Sanctuary is committed to recognizing traditional Native Hawaiian fishing and gathering uses and is required by the HINMSA to facilitate all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, consistent with the primary objective of the protection of humpback whales and their habitat. While the Sanctuary and NOAA do not have legal authority to formally Federally recognize Native Hawaiian groups, few other Federal programs, if any, have language specifically recognizing Native Hawaiian uses.

The Sanctuary program will continue to seek new partnerships and opportunities to work with the Native Hawaiian community to facilitate and support educational and research projects that will

help define and educate others as to the past and present traditional Native Hawaiian subsistence, cultural, and religious uses of the marine environment. Hopefully, this information will lead to a better understanding and appreciation of the Native Hawaiian culture. The National Marine Sanctuary program has experience with traditional Native American and Samoan rights and uses in two sanctuaries; Olympic Coast and Fagatele Bay, respectively. Incorporating these traditional rights and practices, as well as recognizing those rights identified under Federal law, are identified in the management plans of both sites. Additionally, each of the four Federally-recognized Native American tribes within the Olympic Coast National Marine Sanctuary has a seat on the Olympic Coast Sanctuary Advisory Council. Similarly, the Hawaii SAC has a Native Hawaiian representative.

#### USER FEES

**78. Comment:** Mandatory user fees are inevitable if the Sanctuary is adopted, and will be established either by NOAA or by Congress.

**Response:** NOAA acknowledges the near universal public and agency opposition of "user fees" to fund and manage individual sanctuaries. NOAA did not propose broad-based mandatory user fees in the Draft EIS/MP. Further, in 1996, the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. NOAA has clarified references to user fees in the Final Management Plan to eliminate any confusion over this issue.

**79. Comment:** The Sanctuary will collect fees through special-use permits.

**Response:** NOAA has not provided for the issuance of special-use permits in Hawaii. NOAA has generally only issued special-use permits in a few sanctuaries to allow an activity to occur that would otherwise be prohibited by a specific Sanctuary regulation. The Hawaii Sanctuary has not proposed, in either the Draft or Final EIS/MP, issuing independent permits, including special-use permits.

#### PROGRAM FUNDING

**80. Comment:** Who will pay for the administration and implementation of the Management Plan? There is a perception that the Sanctuary would be a Federal "cash cow" bringing money to the State. The cost of administering the Sanctuary, and the fiscal restraints of Congress, make it unlikely that the program would be able to afford to do much more than administer itself. Will the State of Hawaii or local users have to pay for the Sanctuary?

**Response:** The National Marine Sanctuary Program (NMSP) receives annual appropriations from Congress. In 1991, the National Marine Sanctuary Program was appropriated \$5 million. This amount increased to \$12 million in 1995 and \$11.7 million in 1996 and 1997. This Congressional appropriation funds all 12 National Marine Sanctuaries and part of the Program's headquarters office. Sanctuary designation means the Program's annual appropriations will now be allocated to the Sanctuary and will be available for use on Sanctuary-related projects. The NMSP is funded entirely through Federal appropriations, and no State fiscal commitments are required. Additional funding opportunities often become available through other NOAA funding sources and through cost sharing arrangements with other Federal and State agencies. The NMSP may also supplement Congressional appropriations by entering into agreements with any non-profit organization to solicit private donations to carry out the purposes and policies of the Sanctuary. This and other means of voluntary revenue enhancement measures are being pursued

by the Sanctuary program nationwide as a way of generating funding for projects which may otherwise not have enough Congressional funding to cover. Part V of the FEIS/MP discusses the revenue enhancement initiative of the NMSP.

The Hawaii Sanctuary's budget is determined each year by the on-site manager, the regional manager, and the Sanctuaries and Reserves Division (SRD) Chief according to site needs and priorities. Although the site will not be a "cash cow" or have money to immediately implement every provision contained in the Final Management Plan, the site's budget will allow the Sanctuary Manager to begin implementing priority items.

**81. Comment:** The Sanctuary is an unfunded mandate.

**Response:** NOAA disagrees. An unfunded mandate is a government program that requires a Federal or state agency to carry-out a function without providing the fiscal resources to do so. The National Marine Sanctuary is not an unfunded mandate inasmuch as Congress has funded the Program and no monies are required from the State of Hawaii or local users.

**82. Comment:** The Sanctuary is an unwarranted increase in government spending. It is unwise and irresponsible to spend Federal dollars on a Sanctuary that was neither wanted or needed.

**Response:** The National Marine Sanctuary Program receives annual appropriations from Congress to fund the 12 individual sites and the national program. This amount varies from year to year, though it has increased over the last five years. The designation of the Hawaii Sanctuary has not resulted in an increase in government spending, only that some of the annual appropriations are now spent in Hawaii. If the Hawaii Sanctuary was de-designated, this money would be re-absorbed into the NMSP and redistributed among the 11 other sites and the national program (see response #81).

Many State and community participants feel that the expenditure of Federal monies on Sanctuary-sponsored education, research, long-term monitoring, and enforcement programs is an important and needed use of Federal funds, especially given the fiscal crisis of the State government. With Sanctuary monies supplementing existing State and county programs, all agencies are able to implement more projects that are of top priority but currently unfunded.

**83. Comment:** How much money will go towards administration, research, and education? What is the budget breakdown for the site?

**Response:** Each operating National Marine Sanctuary has a site specific operation budget. This budget depends on the size, staffing, resources to be protected, and overall needs of the site. The Hawaii Sanctuary has been both in a development and semi-operational phase since it was designated in 1992. Since the Sanctuary is not fully operational at this time, it is difficult to estimate how much the fully operational site budget would be and how much would go towards education, research, administration, and other activities. The current level of funding (\$372,000 in FY'96) may not adequately represent the budget of a fully operational Hawaii Sanctuary as it will likely increase somewhat. Once the site is operational, the annual operating budget will be a matter of public record. In addition, the SAC will help the Sanctuary Manager determine priority items and thus focus where NOAA should prioritize its funding.

## **SOCIO-ECONOMIC IMPACTS**

**84. Comment:** The Sanctuary proposes to incorporate the National Marine Fisheries Service humpback whale approach regulations that were amended in 1994. The Sanctuary should analyze the socio-economic impacts of these 1994 amendments.

**Response:** The Sanctuary program has no direct jurisdiction over the MMPA or its amendments which were signed into law by Congress in 1994. Congress, in coordination with affected agencies, must consider the environmental and socio-economic impacts of new or modified laws and regulations prior to their enactment. The Sanctuary program is not required to evaluate the socio-economic impacts of the 1994 amendments to the MMPA. However, NOAA has assessed the socio-economic impacts of incorporating the NMFS regulations into the Sanctuary's management regime. Based on the assessment, NOAA has determined that there will be minimal, if any, negative socio-economic consequences associated with incorporation of the regulations into the Sanctuary's management regime. Part IV of the Final EIS/MP discusses socio-economic consequences more in-depth.

**85. Comment:** The DEIS/MP does not clearly describe the socio-economic impacts of the Sanctuary on the ocean users of Hawaii.

**Response:** NOAA prepared a socio-economic assessment of the Draft EIS/MP in compliance with the NMSA and the National Environmental Policy Act (NEPA). As required under these laws, NOAA must describe the socio-economic effects of the implementation of the Sanctuary designation, including any negative impacts produced by management restrictions on income-generating activities. NOAA has determined that the Hawaii Sanctuary will not have negative socio-economic impacts on Hawaii's marine users since the Management Plan is not adding any new independent Sanctuary regulations, permits, or approval authority.

In an effort to maximize protection and minimize impacts on users, NOAA considered socio-economic impacts as it made changes to the Final Management Plan. NOAA has clarified and provided a more thorough socio-economic assessment of the preferred alternative in Parts III and Part IV of the FEIS/MP.

**86. Comment:** The socio-economic impacts of future regulations has not been clearly articulated in Part IV (the socio-economic impacts analysis section) of the DEIS/MP.

**Response:** NOAA has not assessed the socio-economic impacts for future regulations because the need or likelihood of such regulation is speculative. NOAA has determined, based on existing information, that no new regulatory prohibitions or restrictions are needed to protect humpback whales and their habitat. NOAA cannot say if new regulations will be needed in the future, how restrictive they will be, or which user groups will be affected.

**87. Comment:** Unnecessary Sanctuary regulations and restrictions will have a direct negative-effect on the cost of transporting goods between neighbor islands.

**Response:** NOAA disagrees. NOAA is not adding any new independent regulatory prohibitions or restrictions to those already in place. Rather, NOAA is essentially incorporating certain regulations already in existence to protect humpback whales and their habitat. For example, the 100-yard humpback whale approach regulations have been in place and enforced by NMFS since 1987. These regulations have not had significant adverse effects on the cost of transporting goods between islands, and could only impact the cost of transporting goods if a vessel captain was in violation of these regulations.

**88. Comment:** The Draft EIS/MP states that the Sanctuary could lead to increased tourism. If so, what are the socio-economic impacts of this increased tourism.

**Response:** While it is true that some travelers may view the presence of a Humpback Whale Sanctuary as another reason to visit Hawaii, it is doubtful that the Sanctuary, by itself, would result in a significant increase in tourism above and beyond what is already occurring. More accurately, the presence of a Sanctuary would likely create a greater awareness among those tourists who are already in Hawaii that there are whale watching opportunities and protection measures within the Sanctuary. Thus, the Sanctuary may actually enhance the visitor's experience of Hawaii. This greater recognition of the resources as well as the potential for advertisement has occurred in other sanctuaries (e.g., Monterey Bay, Florida Keys, and Channel Islands). Many of the local communities advertise the presence of the Sanctuary as a means of attracting more visitors from an increasingly competitive market and educating those visitors about the area's unique marine resources and the commitment to protecting these resources. Despite the added "attraction" value, however, the designation of these areas as sanctuaries has not resulted in a dramatic increase in tourism.

In Hawaii, NOAA believes that the Sanctuary, working with the local community and marine industries, will help develop a greater understanding and appreciation of humpback whales, their habitat, and those regulations designed to protect them. This increased awareness will hopefully prevent or minimize harassment and other negative impacts associated with human presence (pollution and habitat destruction), while enhancing the beneficial experience of tourists visiting Hawaii.

**89. Comment:** Describe the potential impacts of the Sanctuary to existing resource management programs dealing with water quality issues.

**Response:** The Sanctuary is not issuing independent regulations, permits, or authorizations that would curtail or impede the authority of the existing water quality management agencies. The Sanctuary is developing MOUs with the relevant water quality agencies (i.e. Department of Health) in order to work within their existing permit application review procedures to ensure that Sanctuary concerns are addressed. The Sanctuary will not have authority to prevent the permit issuing agency from approving a project and will work with that agency to supplement monitoring and enforcement efforts (see response #51).

**90. Comment:** NOAA should recognize and protect the existing uses of ocean users.

**Response:** NOAA agrees. NOAA recognizes the many ocean users and industries that continue to operate in Hawaiian waters and that have incorporated measures to voluntarily protect humpback whales in their day-to-day operations. National Marine Sanctuaries are multiple use areas and the Hawaii Sanctuary will facilitate public and private uses (including uses by Native Hawaiians customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of humpback whales and their habitat.

Voluntary compliance with existing regulations is a primary goal of the Sanctuary. The Sanctuary will make every effort to work with the different marine user communities and involve them in the implementation of the Management Plan. The SAC is one mechanism that the Sanctuary has established to formally recognize and involve Sanctuary users in advising on the development of the Final Management Plan and ongoing implementation and management of the Sanctuary (see response #53).

**91. Comment:** NOAA should exempt all commercial transport activities from Sanctuary regulations because of negative economic impacts.

**Response:** NOAA does not agree that commercial transport should be singled out as the only industry that should be exempted from the Sanctuary regulations. The Sanctuary regulations essentially incorporating certain existing restrictions as Sanctuary regulations and is not adding independent Sanctuary regulatory prohibitions or restrictions, permits, or approval requirements beyond what is already. Consequently, the Sanctuary will not pose negative socio-economic impacts on the commercial transport industry and determined that exempting that industry from Sanctuary regulations is neither necessary nor consistent with achieving the purposes of the HINMSA. The commercial transport industry has never been cited for whale harassment.

**NEED/DUPLICATION OF EXISTING EFFORT**

**92. Comment:** There is no need for the Hawaiian Islands Humpback Whale National Marine Sanctuary.

**Response:** NOAA disagrees. NOAA believes that additional resource protection is needed to ensure the long-term recovery and continued vitality of humpback whales and their Hawaiian habitat, and that this can occur primarily through non-regulatory (research, long-term monitoring, education, and coordination) mechanisms. Because of its mandate and its public participation component, the National Marine Sanctuary Program is ideally suited to provide these functions. Moreover, the 25 member SAC provides a forum for representatives of the many different marine users and resource management agencies to discuss management issues concerning the Sanctuary. The SAC has formed working groups to discuss research, education, enforcement, and the continued development of the Sanctuary. Essentially, the SAC has given marine users and resource managers the opportunity to meet, learn, and coordinate with each other (see response #53). The National Marine Sanctuary program can also supplement resources and provide technical support for research, long-term monitoring, education, and existing enforcement programs (see responses #18-19).

Even though the MMPA and the ESA offer protection for the humpback whale, the Sanctuary program offers a broader range of comprehensive protection and management. And while the main focus of the ESA is the recovery of an endangered species, the Sanctuary helps in the recovery of the humpback whale through the additional protection of humpback whale habitat and will offer continued protection through research, education, enforcement, and monitoring long after the species' recovery and removal from the endangered species listing, should that occur.

**93. Comment:** It is not clear what the Sanctuary is protecting humpback whales from.

**Response:** The primary purpose of the Hawaiian Islands Humpback Whale National Marine Sanctuary is to provide comprehensive protection for both humpback whales and their habitat. Since NOAA cannot protect whales from natural predators and other natural causes of mortality, it will focus its management attention on those potential impacts resulting from human activities that are known to presently, or have the potential to adversely impact humpback whales and their habitat. After receiving input from other agencies and searching the current body of scientific literature, NOAA has determined that the existing regulatory measures are adequate for protecting the whales from harmful vessel interactions (see responses #18-19). The Sanctuary will primarily focus its efforts on educating the public on the existing regulations designed to protect humpback whales, enhancing the enforcement of these laws, and working cooperatively with other agencies and researchers to increase the knowledge and understanding of humpback whales, their habitat, and those potential human activities that could adversely impact the whales and their habitat.

**94. Comment:** The Sanctuary will only add an unnecessary layer of bureaucracy and is duplicative of existing management efforts.

**Response:** NOAA disagrees. Throughout the development of the Hawaii Sanctuary, NOAA was repeatedly informed by agencies and the public that there were enough regulations on the books protecting humpback whales and their habitat. NOAA was also told that additional efforts were needed to coordinate existing authorities and to supplement research, monitoring, education, and enforcement efforts. The Sanctuary Management Plan, which relies on existing regulatory authorities, was designed in response to such public comments. NOAA made significant efforts to eliminate duplicative permitting and approval procedures. Since the Sanctuary is relying on existing Federal and State regulations and permits, the Sanctuary is not issuing independent permits, but will work within the existing permit review structures of agencies to ensure that potential impacts to humpback whales and their habitat are addressed. MOUs with the affected agencies will detail how the Sanctuary will coordinate with these agencies, within existing timeframes. The impact on the permit applicants and permit granting agencies will be minimal (see response #20).

The Hawaii Sanctuary will not duplicate existing efforts to protect Hawaii's marine environment, but will help coordinate and integrate such efforts, with a particular focus on the humpback whale and its habitat. Coordination with existing authorities and the private sector will help reduce duplication and focus efforts on filling management and information needs. The Sanctuary can also provide fiscal, personnel, and technical resources to supplement education, research, and enforcement efforts that are not available with the existing programs. Finally, the SAC and associated working groups will, for the first time, provide a forum for resource managers, researcher, educators, Native Hawaiian, and marine users to provide recommendations and advice to the Sanctuary Manager regarding management of the Sanctuary..

**95. Comment:** The Draft EIS fails to explore other options in lieu of the Sanctuary such as giving funds to NMFS, the State, or other organizations.

**Response:** Upon passage of the HINMSA which designated the Sanctuary, Congress directed NOAA to develop a comprehensive Management Plan and regulations to implement the designation and fulfill the purposes of that Act. NOAA assessed the available resources used by existing Federal and State humpback whale resource protection programs, and found that the amount does not adequately fund necessary research, education, enforcement, monitoring, and coordination programs. In developing the Plan, NOAA considered various options, including a no-Sanctuary option, which were not selected as the preferred option. Under the Act, NOAA is required to complete and issue a final management plan and regulations for the Sanctuary. De-designation of the Sanctuary can only occur if the Governor of Hawaii objects to the management plan, regulations, or any term thereof and the Secretary of Commerce subsequently determines to de-designate the site, or if Congress repeals the HINMSA.

The National Marine Sanctuary program is funded through Congressional appropriations to develop and manage National Marine Sanctuary sites and the national program. The Sanctuary program does not have authority, nor the surplus resources, to support efforts in-lieu of having a Sanctuary.

**96. Comment:** The State should implement and support community resource management programs.

**Response:** While this comment is directed to the State and not to NOAA, NOAA does intend to assist the State in efforts to support community resource management programs. The Hawaii Sanctuary was not designated nor developed to replace these community-based efforts, but to become another means of supporting such efforts that are consistent with the Sanctuary's goals and objectives. The Sanctuary will look at the community-based plans and programs as a knowledge source and as a resource management partner. Close coordination will be required to truly complement efforts, and the Sanctuary has already initiated such efforts to work at the local level. On Maui, DOH and Maui County, in partnership with the Sanctuary, developed the Maui volunteer water quality monitoring program. The Sanctuary has also worked with local conservation groups to develop whale watching brochures, and educational programs concerning the coral reef initiative throughout the State. Many of these community and State efforts would not have been accomplished without fiscal support from the National Marine Sanctuary Program. While the Sanctuary program is supportive of such State initiatives, however, the program has no authority to dictate that the State undertake such measures.

**97. Comment:** The Hawaii ORMP already exists and the Sanctuary detracts resources (money and staff) away from implementing that plan.

**Response:** NOAA disagrees. The State of Hawaii initiated a statewide effort to develop the ORMP in the late 1980s. This plan was finished in 1991 and is far more comprehensive in scope than the Sanctuary Management Plan. However, it has remained a plan and is not being fully implemented because of fiscal constraints. The Hawaii Sanctuary was not intended to replace the ORMP, but to complement this statewide community effort. Many elements of the Sanctuary Management Plan, including greater agency coordination, community involvement, education, research, and enforcement are fundamental resource management needs identified by the ORMP. Through proper coordination with the State (such as through the SAC or the State's Marine and Coastal Zone Management Advisory Group), the Sanctuary can be used to help implement portions of the ORMP that are consistent with the Sanctuary Management Plan. Part IV of the Final EIS/MP identifies several components of the ORMP that are compatible with the Sanctuary. The Sanctuary will not compete or take fiscal resources away from ORMP implementation since the ORMP is a State initiative and the Sanctuary is Federally funded. In this regard, the Sanctuary Program has already participated in a number of scoping and planning meetings on how to best implement the ORMP and how the Sanctuary can co-fund portions that also address the Sanctuary's goals and mission.

**98. Comment:** If the Sanctuary is so critical to the recovery of the humpback whale, why was it not included in the NMFS Humpback Whale Recovery Plan?

**Response:** The NMFS Humpback Whale Recovery Plan was completed and released to the public in 1991 -- one-year before the Sanctuary was designated. Although NMFS and SRD are both divisions within NOAA, they each have separate responsibilities and congressional mandates. SRD has been delegated the authority to administer the National Marine Sanctuary Program, including the development of new sites. NMFS does not have authority to designate or manage National Marine Sanctuaries, and as such would not normally undertake sanctuary designation as a means of protecting marine mammals. NMFS would more likely pursue other alternatives within their purview, such as designating critical habitat and/or promulgating regulations under the ESA to protect endangered species. Critical habitat was one of the measures identified in the recovery plan. NOAA believes that the Sanctuary is a tool which can be used to facilitate the implementation of the NMFS Recovery Plan.



**99. Comment:** The marine recreation and user community has been educating and self-regulating itself for years. Extensive humpback whale research and education efforts have been funded by the private sector since the 1970's, and government involvement is not needed. Why does the Sanctuary have to step-in and replace these on-going efforts? The Sanctuary does not recognize these existing efforts.

**Response:** NOAA will not replace the efforts of existing marine recreation, education, research, and other groups. The Sanctuary recognizes and applauds the past and present efforts that the local researchers, educators, marine recreation industry, and environmental organizations have undertaken to conduct research, educate the public, and self-regulate themselves and their constituents. The Sanctuary views these ongoing and future private efforts as crucial to the implementation and success of the Sanctuary Management Plan. The Sanctuary will work with these organizations and individuals to develop partnerships, cooperative agreements, and other working relationships to ensure that existing and future conservation and research efforts are complementary. Public participation through the SAC and other associated working groups (education, research, management) will help the Sanctuary and the local community identify, fund, and implement priorities in the upcoming years. Such community-based input will lead to better coordination, less duplication, and overall better protection for the humpback whale and its habitat.

**100. Comment:** The Hawaii Sanctuary will add few benefits to the State.

**Response:** NOAA disagrees. There are numerous benefits associated with a national marine sanctuary, including enhanced opportunities for research and long-term monitoring, additional marine educational material development, and increased support for the enforcement of existing laws. NOAA has formed a SAC which gives the public more opportunity and input in the management the Sanctuary (see response #53). This enhanced communication and coordination will become a powerful tool to bring the public into discussions as they concern the management of humpback whales and their habitat. SAC working groups or sub-committees on education, research, regulations, and enforcement, as well as county representation will ensure public input from across the State and from a diverse range of marine users. Additionally, the presence of a sanctuary draws attention to the fact that the marine waters of an area are of national significance and worth protecting. This perception can lead to enhanced ecotourism opportunities previously unavailable, as has occurred in other National Marine Sanctuaries. (See response #19 for a more detailed discussion as to the added protection benefits to humpback whales and their habitat.).

#### DESIGNATION PROCESS

**101. Comment:** The Sanctuary's Congressional designation circumvented public input and is in violation of the intent of the National Marine Sanctuaries Act.

**Response:** NOAA disagrees. There are two ways by which a National Marine Sanctuary can be designated. The first way a National Marine Sanctuary can be designated is for anyone to nominate the site for consideration by NOAA as a Sanctuary. The site is evaluated and, if chosen, NOAA prepares a draft and final EIS in accordance with the NMSA and NEPA. The Sanctuary is not officially designated until after the close of a review period of forty-five days of continuous session of Congress beginning on the date notice of designation is issued. During this time, the Governor of a state with waters included in the proposed Sanctuary may object to the Management Plan or regulations, or any term thereof, and that management plan, regulation, or term will not take effect in the state waters of that Sanctuary.

The second way a sanctuary can be designated is by legislation (see response #103), which is how, for example, the Hawaiian Islands Humpback Whale and the Florida Keys National Marine

Sanctuaries were designated. Once a site is designated, Congress requires NOAA to prepare a management plan and pursuant to the NMSA and the NEPA. The Governor of a state with waters included in the Sanctuary is provided the opportunity to review and object to the management plan and implementing regulations or any terms thereof. If a Governor does object, the management plan, regulation, or term will not take effect in State waters of that Sanctuary.

Therefore, the processes for both the development of and for the Governor's acceptance and approval of the final EIS/MP are the same for both types of designations, the only difference being the impetus which begins the process.

**102. Comment:** NOAA has avoided public disclosure of information and bypassed NMSA procedures in making Sanctuary boundary amendments.

**Response:** The Hawaiian Islands Humpback Whale National Marine Sanctuary was designated by Congress, an action which is fully within Congress' purview. In subsequently developing the management plan, NOAA has not avoided any form of disclosure of information. NOAA held a series of statewide scoping meetings in March 1993 to gather public comments to assist in development of the management plan and regulations to implement the Congressional designation. In the summer of 1993, NOAA and the State jointly convened a Sanctuary Working Group (SWG) to offer advice and guidance on the direction of the Sanctuary and the development of the DEIS. All SWG meetings were given public notice through press releases and direct mailings to over 400 individuals and organizations, and were open to the public. (The SWG remained in effect until the DEIS was published in 1995.) In January 1994, a Discussion Paper was published to gather input to direct NOAA in the development of the Sanctuary's management regime. A series of statewide public meetings were held to solicit more public input on the paper in March 1994. In summer 1994, a Summary of Proposals for Possible Inclusion in the DEIS was released to the SWG for their review. In 1995, NOAA published the DEIS/MP in which NOAA described a preferred boundary alternative that expanded the Congressionally designated boundary. NOAA held over 25 statewide public information workshops to present the document to the public and to answer questions regarding its content. SRD also held seven public hearings throughout the main Hawaiian Islands to receive comments on the DEIS/MP. In total, over 250 written comments and oral testimonies were received by NOAA during the 90-day comment period. Finally, in March 1996, the 25 member SAC was created by NOAA to provide a more formalized means of providing advice and recommendations to the Sanctuary Manager and NOAA on the continued development of the site, including such issues as boundary, regulations and administration (see response #53).

NOAA has not bypassed any, and in fact has gone well beyond the minimum required, NMSA and other requirements for public input in developing the management plan, including making proposed boundary amendments. The Congressional law which designated the Sanctuary specifically allows NOAA to amend the boundary as necessary to fulfill the purposes of the Act. NOAA's preferred boundary alternative reflects this change.

**103. Comment:** Why does the Sanctuary continue despite the opposition? Many ocean users oppose Sanctuary.

**Response:** While NOAA recognizes that there are certain factions of the general public in Hawaii opposed to the Sanctuary, there are also certain factions that are in support. By passing the HINMSA, Congress designated the Sanctuary and directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary.

**FEDERAL PRESENCE**

**104. Comment:** Citizens of Hawaii do not want the Federal government in State waters usurping county and State agency jurisdiction. The Sanctuary is unwarranted intrusion in State waters.

**Response:** The Sanctuary program will not usurp the State's authority (or any other Federal agency's authority) or rights within the Sanctuary boundary. The Sanctuary program will work with the State of Hawaii to cooperatively manage and protect humpback whales and their habitat. The Sanctuary is not proposing to have independent permit requirements or approval authority, but will work cooperatively within the existing permit review framework. NOAA is working with DOH, DLNR, and NMFS, to develop MOUs to clarify permit review procedures and interactions with the Sanctuary program. Where the boundary of the Sanctuary lies outside of State jurisdiction, existing Federal programs will continue to have jurisdiction.

The State of Hawaii initially worked with their Congressional delegation to get the Sanctuary designated in 1992. The Governor's Office of Planning (OP) (formally the Office of State Planning) has been the lead state agency working in partnership with the National Marine Sanctuary program for over 3-1/2 years to ensure that the State's jurisdiction and rights are maintained and not relinquished. OP has gone on record as supporting the Sanctuary designation process, and representatives have attended nearly all the public workshops and public meetings held since 1992. OP has worked with NOAA to develop the DEIS/MP and the FEIS/MP.

**COMMENTERS ON THE DRAFT ENVIRONMENTAL  
IMPACT STATEMENT AND MANAGEMENT PLAN**

**TESTIMONY MATRIX**

# Public Testimony Matrix

\*Numbers correspond to regulatory alternatives and letter refer to boundary alternatives listed in the DEIS/MP

Agencies		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforcement	6 Management/Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio-Economic Impacts	14 Need	15 Designation	16 Federal Presence
1.	City and County of Honolulu											X	X	X	X		X
2.	County of Hawaii			X	X				X		X		X	X	X		X
3.	Department of Land and Natural Resources -- Kauai Office	* 4			X		X				X		X	X	X		
4.	Hawaii Air National Guard			X			X									X	
5.	Kahoolawe Island Reserve Commission		X								X						
6.	Office of Hawaiian Affairs										X				X		
7.	National Marine Fisheries Service			X		X	X		X	X							
8.	State Department of Transportation	X		X										X			
9.	University of Hawaii -- Environmental Center	X		X			X								X		
10.	U. S. Department of the Army--Corps of Engineers	X					X								X	X	X
11.	U. S. Department of the Navy	* C															
12.	U. S. Environmental Protection Agency			X			X		X					X	X		
13.	Western Pacific Regional Fishery Mgmt. Council			X			X										

Organizations		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforcement	6 Management/Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio-Economic Impacts	14 Need	15 Designation	16 Federal Presence
1.	1000 Friends of Kauai	* D		X			X								X		
2.	A & B Properties	X											X		X		X
3.	Conservation Council of Hawaii				X							X	X				X
4.	Earth Island Institute			X	X		X								X		
5.	Eye of the Whale	X		X				X	X	X			X				
6.	Hanalei Community Association	* D		* 3/6			X				X						
7.	Hawaii Audubon Society			X			X	X	X	X					X	X	
8.	Hawaii Chamber of Commerce -- Maritime Committee			X					X			X	X				
9.	Hawaiian International Billfish Association	X													X		
10.	Hui Moana	X		* 3					X						X		
11.	Ka Lahui Hawaii				X						X	X	X	X	X		X
12.	Kauai Sierra Club	X													X		

Organizations (Continued)		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
13.	Marine Mammal Research Program						X	X	X								X
14.	McBoat	X		X		X		X							X		X
15.	Milani Neighborhood Board	X					X							X			
16.	Molokai Ranch			X			X	X						X			X
17.	Moss Landing Research Laboratory	*B					X		X								
18.	Personal Watercraft Industry Association	X		X						X					X		X
19.	Sierra Club- Kauai	X					X				X			X	X		
20.	Sierra Club - Hilo	X				X			X	X					X		
21.	Sierra Club - Oahu	*D		*3			X								X		
22.	Waikoloa Land Company			X			X							X	X		X
23.	Whales Alive			X			X								X		X

Individuals		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
1.	(Anonymous - Hilo)													X	X		
2.	(Unknown R.), Terry														X		
3.	(Unknown), Joan														X		
4.	Laureen Elizabeth				X										X	X	X
5.	Nano				X				X	X					X		
6.	Agard, Louis														X		
7.	Aila, William	X		X	X			X			X	X	X		X		
8.	Aki, Dennis	X		X			X		X			X			X		X
9.	Andersen, Mike			X										X	X	X	X
10.	Anderson, Captain Gary	*C															X
11.	Anderson, Laurie														X		
12.	Bailey, Michael							X							X		X
13.	Bal, Vernon					X	X						X	X		X	X
14.	Bautista, Ronald								X						X		
15.	Berg, Carl	*D		*IV			X			X							
16.	Bernard, Hannah				X		X								X		
17.	Bilbo, Pete												X				X
18.	Block, Richard														X		X
19.	Bonk-Abramson, Keiko	X			X		X		X	X	X	X		X	X		X
20.	Bosma, Rudy					X							X				X
21.	Brindo-Vas, Norman				X	X	X		X								
22.	Builer, Stan			X			X								X		X

<b>Individuals (Continued)</b>		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
23.	Caccia, David	X													X		
24.	Campbell, Brian	X				X											
25.	Canja, Susan														X		
26.	Carlisle, Sandra			X		X								X	X		
27.	Carrillo, Bianca														X		
28.	Cho, John														X		
29.	Choi, Dick	X		X											X	X	
30.	Chong, Herman	X		X	X							X			X		
31.	Choun, Sumay														X		
32.	Chuan, Ray			X	X										X		X
33.	Coleman, Richard	X		X											X		
34.	Collins, Tori	X					X								X		
35.	Coon, Jim												X	X			X
36.	Corder, Ron				X		X					X			X		
37.	Croydon, Guy				X								X	X			X
38.	Curtis, Henry			X	X						X				X		
39.	Davis, Rick				X					X					X		
40.	Decosterd, Kutria														X		
41.	Dodge, Susie									X					X		
42.	Dods, Walt				X				X						X		X
43.	Dunn, Corbin														X		
44.	Dumin, Jennifer														X		
45.	Evans, Chris			X	X	X				X					X		
46.	Fairbanks, Keoni		X								X				X		
47.	Fang, Fanny														X		
48.	Fleming, William				X					X			X		X		X
49.	Flores, Amanda														X		
50.	Fonoimoana, Kent				X										X		X
51.	Fonoimoana, Ted				X										X		
52.	Forestell, Paul	X		X													
53.	Frahme, Carl														X		
54.	Fung, Po Ying														X		
55.	Gaffney, Rick	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
56.	Godinez, Elizabeth														X		
57.	Goedecke, Diane														X		
58.	Gomes, James	X		X	X									X	X		X
59.	Grossman, Kim														X		
60.	Gutierrez, Brennan														X		
61.	Hanada, Paul				X										X		X
62.	Hart, Carol	X		X			X					X	X	X	X		X
63.	Hawley, Julie														X		

Individuals (Continued)		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
64.	Heick, James														X		X
65.	Hendrick, Todd			X											X		
66.	Hernandez, Natalie								X						X		
67.	Himschoot, Rebecca				X				X	X			X		X		X
68.	Ho, Nelson							X			X				X		X
69.	Hofelich, Bob														X		X
70.	Holt, Kate				X										X		X
71.	Hong, Glenn			X			X			X	X				X		X
72.	Housh, Jim						X			X					X		X
73.	Hudson, Rob	D		6								X	X	X		X	X
74.	Huffman, Steve												X	X	X	X	X
75.	Hylkema, Jim				X					X			X		X		
76.	Inaba, Don				X								X				X
77.	Ishikawa, Ralph	X	X	X			X								X		X
78.	Johnson, Chuck	X		X	X											X	X
79.	Jordan, Rick											X			X		X
80.	Juarez, Steve											X			X		X
81.	Kahui, Craig, V.	X			X				X		X				X		X
82.	Kaing, Earl								X		X				X		X
83.	Kaleiipu, Ben			X					X						X		X
84.	Kamakana, Wilma	X								X	X			X	X		
85.	Kawamura, Walter	A			X												
86.	Kaufman, Greg											X	X		X	X	X
87.	King, William			X	X				X	X		X	X	X	X	X	X
88.	Koehne, Cindy			X						X			X				X
89.	Krown, Steven			X						X					X	X	X
90.	Lai, Virginia																
91.	Le, An														X		
92.	Lee, Wayne								X								
93.	Lilly, Dr. John C.														X		X
94.	Linser, Elizabeth	X							X					X			
95.	Lofstedt, Curtis														X		
96.	Luckey, Jim								X	X			X	X			X
97.	Lui, Susanna														X		X
98.	Luuwai, Kalei			X	X				X		X		X		X		X
99.	Martin, Lady									X			X		X		X
100.	Matsushima, (Mr.)				X					X			X		X		X
101.	Mawai, Kelii				X					X			X	X	X		
102.	May, Jen									X					X		
103.	Mazzuca, Lori						X		X						X		X



<b>Individuals (Continued)</b>		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
104.	McOmber, Ron			X			X	X	X								X
105.	McSweeney, Dan	X		X	X	X	X		X	X	X		X	X	X		X
108.	Medeiros, Frank				X							X	X		X		X
107.	Meheula, Harold				X										X		X
108.	Mehl, Helen	X			X				X	X		X					X
109.	Mehl, William				X		X								X		X
110.	Meints, Deborah														X		
111.	Merrill, Robert	*C		X	X		X		X			X	X	X	X		X
112.	Meyer, Pamela	X													X		
113.	Miles, Glen												X	X			
114.	Miratello, Ron			X								X	X				
115.	Moore, Dale														X		
116.	Moore, Gordon			X								X			X		
117.	Morita, Naomi														X		
118.	Morris, Kirstin	*D		*6											X		
119.	Morris, Michelle				X				X						X		
120.	Morris, Nina	*D		*6		X			X	X							
121.	Mossman, William		X	X							X		X	X	X	X	X
122.	Moura, Charles				X										X		
123.	Moyers, Michael			X										X	X		X
124.	Murray, R.J.			X								X	X		X		
125.	Mustard, William				X												X
126.	Myers, Preston																X
127.	Nanbu, Jodi						X								X		
128.	Nelson, Dennis	X		X	X								X	X	X	X	X
129.	Ngo, Joseph														X		
130.	Nguyen, Michelle														X		
131.	Novembre, Tracy														X		
132.	O'Hara, James			X	X								X	X	X	X	X
133.	Oberste-Lehn, Deane	*D	X	*5			*6							X	X		
134.	Oki, George	X		X									X		X	X	
135.	Osorio, Elroy			X			X					X	X		X	X	X
136.	Parks, Noreen	X			X										X		
137.	Pfeffer, Roger			X	X				X						X		
138.	Pinney, Jan			X					X	X	X		X		X		X
139.	Pomroy, Sharon				X								X				X
140.	Pon, Vivian										X				X		
141.	Pooli, Pua		X		X	X									X		X
142.	Price, Skip														X	X	X
143.	Reed, (Mrs.)								X				X			X	X

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Individuals (Continued)	Boundary	Kahoolawe	Regulations	Fishing	Enforce- ment	Manage- ment/ Scope	Advisory Council	Research	Education	Native Hawaiian	User Fees	Funding	Socio- Economic Impacts	Need	Designation	Federal Presence
144. Reed, Richard												X		X		X
145. Reich, Joe			X	X												
146. Ridington, Jillian										X				X		X
147. Robinson, Jennifer													X	X		
148. Rogers, Georgia														X		
149. Rohrer, Peter			X	X										X		
150. Rosehill, Bill						X		X	X					X		X
151. Rysdale, Tim	*B		*I					X	X							
152. Saito, Richard				X					X					X		X
153. Santos, Sal			X	X												X
154. Schinnerer, John	X													X		
155. Shaker, Reza														X		
156. Shepherd, Shirley														X		
157. Shioji, Carl			X	X										X		X
158. Smith, Thomas	*E		X										X	X	X	
159. Sobel, Stacey														X		
160. Spill, Rick	X					X	X	X	X	X		X		X		
161. Stehura, Sean	X												X	X		
162. Sumang, James														X		
163. Sumida, Larry														X		
164. Sutcliffe, Claude	X			X				X		X				X		
165. Smith, Linda														X		
166. Sydney, Susanne														X		
167. Tafoya, Nancy														X		
168. Tanaka, Leonard			X			X		X						X	X	X
169. Tang, Laura														X		
170. Tran, Anthony Alan														X		
171. Tran, John														X		
172. Trask, Michael			X	X						X	X	X		X	X	X
173. Trask, Mililani			X	X		X		X		X	X	X		X	X	X
174. Truong, David														X		
175. Tummons, Patricia	X		X	X				X	X							
176. Tyler, Curtis	X	X				X				X		X	X			X
177. Uldricks, Jeff												X	X	X		
178. Utley, Phillip														X		
179. Van, Wendy			X										X	X		
180. Vance, Phillip														X		
181. Vander Hoek, Gene	X		X									X	X	X		
182. Vanderbelt, DeGray			X	X												X
183. Ventura, Anthony	X		X	X										X		X
184. Ventura, Robin											X	X		X		

<b>Individuals (Continued)</b>		1 Boundary	2 Kahoolawe	3 Regulations	4 Fishing	5 Enforce- ment	6 Manage- ment/ Scope	7 Advisory Council	8 Research	9 Education	10 Native Hawaiian	11 User Fees	12 Funding	13 Socio- Economic Impacts	14 Need	15 Designation	16 Federal Presence
185.	Villesvik, John	X			X				X	X	X		X	X			X
186.	Waldau, Peter	X															
187.	Wang, Sally			X	X				X	X		X			X		
188.	Warren, Paul														X		
189.	Watson, Kerry				X										X		X
190.	White, Reg			X									X		X		X
191.	Whitmire, Paul				X							X	X				
192.	Williams, Vikki														X		
193.	Willse, Wendy						X		X	X				X	X	X	X
194.	Witten, James	X					X		X	X			X	X	X		X
195.	Wong, Kathy														X		
196.	Wong, Larry														X		
197.	Yanagida, Jon			X		X							X		X		X

\*Numbers correspond to regulatory alternatives and letter refer to boundary alternatives listed in the DEIS/MP

THIS PAGE INTENTIONALLY LEFT BLANK

**THIS PAGE INTENTIONALLY LEFT BLANK**

## Appendix B

### *THE NATIONAL MARINE SANCTUARIES ACT (NMSA), 16 U.S.C. 1431 ET SEQ.* As amended by Pub. L. 104-283

[NOTE: The Oceans Act of 1992, Pub. L. 102-587, and the National Marine Sanctuaries Preservation Act of 1996, Pub. L. 104-283, contain provisions pertaining to national marine sanctuaries.]

#### **Sec. 301. FINDINGS, PURPOSES, AND POLICIES**

##### **(a) FINDINGS.—**The Congress finds that—

- (1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;
- (2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some instances, international, significance;
- (3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;
- (4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation, research, and management;
- (5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and
- (6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations.

##### **(b) PURPOSES AND POLICIES.—**The purposes and policies of this title are—

- (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;
- (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
- (3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;
- (4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;
- (5) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
- (6) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;
- (7) to create models of, and incentives for, ways to conserve and manage these areas;
- (8) to cooperate with global programs encouraging conservation of marine resources; and
- (9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

#### **Sec. 302. DEFINITIONS**

##### **As used in this title, the term—**

- (1) "Draft management plan" means the plan described in section 304(a)(1)(C)(v);
- (2) "Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;
- (4) "Secretary" means the Secretary of Commerce;

(5) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(6) "damages" includes—

(A) compensation for—

- (i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or
- (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

(B) the cost of damage assessments under section 312(b)(2); and

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;

(7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury;

(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary; and

(9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson Fishery and Conservation Act.

### Sec. 303. SANCTUARY DESIGNATION STANDARDS

(a) STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

(1) determines that the designation will fulfill the purposes and policies of this title; and

(2) finds that—

(A) the area is of special national significance due to its resource or human-use values;

(B) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.—

(1) Factors.—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider—

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

(B) the area's historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

- (G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;
- (H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and
- (I) the socioeconomic effects of sanctuary designation.

(2) Consultation.—In making determinations and findings, the Secretary shall consult with—

- (A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;
- (B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;
- (C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;
- (D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and
- (E) other interested persons.

(3) Resource Assessment Report.—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 304(a)(2), a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial governmental, or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial, governmental, or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report including information on any past, present or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.

## Sec. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

### (a) SANCTUARY PROPOSAL.—

(1) Notice.—In proposing to designate a national marine sanctuary, the Secretary shall—

- (A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;
- (B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and
- (C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate documents, including an executive summary, consisting of—
  - (i) the terms of the proposed designation;
  - (ii) the basis of the findings made under section 303(a) with respect to the area;
  - (iii) an assessment of the considerations under section 303(b)(1);
  - (iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;
  - (v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;
  - (vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;
  - (vii) the draft environmental impact statement;



(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

(ix) the proposed regulations referred to in subparagraph (A).

**(2) Environmental Impact Statement.—The Secretary shall—**

(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 303(b)(3), maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

(B) make copies of the draft environmental impact statement available to the public.

**(3) Public Hearing.—**No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

**(4) Terms of Designation.—**The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

**(5) Fishing Regulations.—**The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

**(6) Committee Action.—**After receiving the documents under subsection (a)(1)(C), the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

**(b) TAKING EFFECT OF DESIGNATIONS.—**

**(1) Notice.—**In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and

regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless in the case of a natural [sic] marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) **Withdrawal of Designation.**— If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation or not certified under paragraph (1) shall take effect.

(3) **Procedures.**— In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) and paragraph (1) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

**(c) ACCESS AND VALID RIGHTS.**—

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

**(d) INTERAGENCY COOPERATION.**—

**(1) Review of Agency Actions.**—

(A) **In General.**—Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.

(B) **Agency Statements Required.**— Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.

(2) **Secretary's Recommended Alternatives.**—If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.

(3) **Response to Recommendations.**—The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.

**(e) REVIEW OF MANAGEMENT PLANS.**—Not more than 5 years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding 5 years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title.

**Sec. 305. APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS**

**(a) REGULATIONS.**—This title and the regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with the treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

- (1) generally recognized principles of international law;
- (2) an agreement between the United States and the foreign state of which the person is a citizen; or
- (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) **NEGOTIATIONS.**—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(c) **INTERNATIONAL COOPERATION.**—The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in the furtherance of the purposes and policies of this title and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

### **Sec. 306. PROHIBITED ACTIVITIES**

It is unlawful to—

- (1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;
- (2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this title; or
- (4) violate any provision of this title or any regulation or permit issued pursuant to this title.

### **Sec. 307. ENFORCEMENT**

(a) **IN GENERAL.**—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.

(b) **POWERS OF AUTHORIZED OFFICERS.**—Any person who is authorized to enforce this title may—

- (1) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;
- (2) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;
- (3) seize any evidence of a violation of this title or of any regulation or permit issued under this title;
- (4) execute any warrant or other process issued by any court of competent jurisdiction; and
- (5) exercise any other lawful authority.

(c) **CIVIL PENALTIES.**—

- (1) **Civil penalty.**—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.
- (2) **Notice.**—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.
- (3) **In Rem Jurisdiction.**—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.
- (4) **Review of Civil Penalty.**—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.
- (5) **Collection of Penalties.**—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the

amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) **Compromise or Other Action by Secretary.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

**(d) FORFEITURE.—**

(1) **In General.**—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 312. None of those proceeds shall be subject to set-off.

(2) **Application of the Customs Laws.**—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

(3) **Disposal of Sanctuary Resources.**—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) **Presumption.**—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

**(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—**

**(1) Expenditures.—**

(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

(iii) manage and improve any other national marine sanctuary.

(2) **Liability for Costs.**—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(f) **SUBPOENAS.**—In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, United States Code, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

(g) **USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.**—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies,

and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(h) **COAST GUARD AUTHORITY NOT LIMITED.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

(i) **INJUNCTIVE RELIEF.**—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 312, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(j) **AREA OF APPLICATION AND ENFORCEABILITY.**—The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

### **Sec. 308. SEVERABILITY**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

### **Sec. 309. RESEARCH, MONITORING, AND EDUCATION**

(a) **IN GENERAL.**—The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this title.

(b) **PROMOTION AND COORDINATION OF SANCTUARY USE.**—The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.

### **Sec. 310. SPECIAL USE PERMITS**

(a) **ISSUANCE OF PERMITS.**—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

- (1) to establish conditions of access to and use of any sanctuary resource; or
- (2) to promote public use and understanding of a sanctuary resource.

(b) **PERMIT TERMS.**—A permit issued under this section—

- (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
- (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
- (4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

(c) **FEES.**—

- (1) **Assessment and Collection.**—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) Amount.—The amount of a fee under this subsection shall be equal to the sum of—

- (A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
- (B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
- (C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable, return to the United States Government.

(3) Use of Fees.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

- (A) for issuing and administering permits under this section; and
- (B) for expenses of designating and managing national marine sanctuaries.

(d) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

- (1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;
- (2) assess a civil penalty in accordance with section 307; or
- (3) both.

(e) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(f) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

### **Sec. 311. COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS**

(a) COOPERATIVE AGREEMENTS, GRANTS AND OTHER AGREEMENTS.—The Secretary may enter into cooperative agreements, financial agreements, grants, contracts, or other agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this title.

(b) AUTHORIZATION TO SOLICIT DONATIONS.—The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this title.

(c) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(d) ACQUISITIONS.—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title

### **Sec. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES**

(a) LIABILITY FOR INTEREST.—

(1) Liability to United States.—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—

- (A) the amount of response costs and damages resulting from the destruction, loss, or injury; and
- (B) interests on that amount calculated in the manner described under section 1005 of the Oil Pollution Act of 1990.

(2) Liability In Rem.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(3) Defenses.—A person is not liable under this subsection if that person establishes that—

- (A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;
  - (B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or
  - (C) the destruction, loss, or injury was negligible.
- (4) **Limits to Liability.**— Nothing in sections 4281–4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893, shall limit the liability of any person under this title.

**(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.**—

- (1) **Response Actions.**—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.
- (2) **Damage Assessment.**—The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

**(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.**—The Attorney General, upon request of the Secretary, may commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

**(d) USE OF RECOVERED AMOUNTS.**—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

- (1) **Response Costs And Damage Assessments.**— Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.
- (2) **Restoration, Replacement, Management, And Improvement.**—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—
- (A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;
  - (B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and
  - (C) to manage and improve any other national marine sanctuary.
- (3) **Federal-State Coordination.**—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.

**Sec. 313. AUTHORIZATION OF APPROPRIATIONS**

There are authorized to be appropriated to the Secretary to carry out this title the following: (1) \$12,000,000 for fiscal year 1997; (2) \$15,000,000 for fiscal year 1998; and (3) \$18,000,000 for fiscal year 1999.

**Sec. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS**

**(a) CONGRESSIONAL POLICY.** — In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina. [P.L. 102–587 authorized a grant for the acquisition of space in Hatteras Village, NC, for display of artifacts and administration and operations of the Monitor National Marine Sanctuary.]

**(b) INTERPRETATION AND DISPLAY OF ARTIFACTS.**—

- (1) **Submission Of Plan.** — The Secretary shall, within six months after the date of the enactment of this section, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

- (2) Contents Of Plan.—The plan submitted under subsection (a) shall, at a minimum, contain—
- (A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;
  - (B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;
  - (C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and
  - (D) a draft cooperative agreement with the State of North Carolina to implement the plan.

(c) DISCLAIMER.—This section shall not affect the following:

(1) Responsibilities Of Secretary.—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

(2) Authority Of Secretary.—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

[NOTE: Section 4 of the National Marine Sanctuaries Preservation Act, Pub. L. 104-283, requires the Secretary to prepare a plan for the management, stabilization, preservation, and recovery of artifacts and materials of the U.S.S. Monitor.]

### Sec. 315. ADVISORY COUNCILS

(a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an 'Advisory Council') to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—

- (1) persons employed by Federal or State agencies with expertise in management of natural resources;
- (2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act; and
- (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Program Amendments Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

- (1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.
- (2) Emergency meetings may be held at the call of the chairman or presiding officer.
- (3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.
- (4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

### Sec. 316. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES

(a) AUTHORITY.—The Secretary may establish a program consisting of--



- (1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;
- (2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
- (3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;
- (4) the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
- (5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;
- (6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);
- (7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and
- (8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries.

Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.

(b) **CONTRACT AUTHORITY.**— The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a).

(c) **RESTRICTIONS.**— The Secretary may restrict the use of the symbols published under subsection (a), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

(d) **PROPERTY OF UNITED STATES.**— Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) is deemed to be the property of the United States.

(e) **PROHIBITED ACTIVITIES.**— It is unlawful for any person—

- (1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;
- (2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;
- (3) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a monetary or in-kind contribution to the Secretary; and
- (4) to violate any regulation promulgated by the Secretary under this section.

---

Oceans Act of 1992

Sections 2202 - 2307 of the Oceans Act of 1992, as amended by Pub. L. 104-283, contain provisions pertaining to National Marine Sanctuaries.

**Sec. 2202. STELLWAGEN BANK NATIONAL MARINE SANCTUARY**

(a) **DESIGNATION.**—The area described in subsection (b) is designated as the Stellwagen Bank National Marine Sanctuary (hereafter in this section referred to as the "Sanctuary").

(b) **AREA.**—The Sanctuary shall consist of all submerged lands and waters, including living and nonliving marine resources within those waters, bounded by the area described as Boundary Alternative 3 in the Draft Environmental Impact Statement and Management Plan for the Proposed Stellwagen Bank National Marine Sanctuary, published by the Department of Commerce in January 1991, except that the western boundary shall be modified as follows:

(1) The southwestern corner of the Sanctuary shall be located at a point off Provincetown, Massachusetts, at the following coordinates: 42 degrees, 7 minutes, 44.89 seconds (latitude), 70 degrees, 28 minutes, 15.44 seconds (longitude).

(2) The northwestern corner of the Sanctuary shall be located at a point off Cape Ann, Massachusetts, at the following coordinates: 42 degrees, 37 minutes, 53.52 seconds (latitude), 70 degrees, 35 minutes, 52.38 seconds (longitude).

(c) **MANAGEMENT.**—The Secretary of Commerce shall issue a management plan for the Sanctuary in accordance with section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434), as amended by this title.

(d) **SAND AND GRAVEL MINING ACTIVITIES PROHIBITED.**—Notwithstanding any other provision of law, exploration for, and mining of, sand and gravel and other minerals in the Sanctuary is prohibited.

(e) **CONSULTATION.**—In accordance with the procedures established in section 304(d) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this title, the appropriate Federal agencies shall consult with the Secretary on proposed agency actions in the vicinity of the Sanctuary that may affect sanctuary resources.

(f) **AUTHORIZATION.**—There are authorized to be appropriated to the Secretary of Commerce for carrying out the purposes of this section \$570,000 for fiscal year 1993 and \$250,000 for fiscal year 1994.

(g) **OFFICE.**—The Secretary of Commerce shall consider establishing a satellite office for the Stellwagen Bank National Marine Sanctuary in Provincetown, Gloucester, or Hull, Massachusetts.

[NOTE: Section 11 of the National Marine Sanctuaries Preservation Act, Pub. L. 104-283, changed the name of this sanctuary to the Gerry E. Studds Stellwagen Bank National Marine Sanctuary.]

**Sec. 2203. MONTEREY BAY NATIONAL MARINE SANCTUARY**

(a) **ISSUANCE OF DESIGNATION NOTICE.**—Notwithstanding section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b)), the designation of the Monterey Bay National Marine Sanctuary (hereafter in this section the "Sanctuary"), as described in the notice of designation submitted to the Congress on September 15, 1992, shall take effect on September 18, 1992.

(b) **OIL AND GAS ACTIVITIES PROHIBITED.**—Notwithstanding any other provision of law, no leasing, exploration, development, or production of oil or gas shall be permitted within the Sanctuary as provided by section 944.5 of the National Environmental Impact Statement and Management Plan for the Monterey Bay National Marine Sanctuary, published by the Department of Commerce in June 1992.

(c) **CONSULTATION.**—Section 304(e) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this title, shall apply to the Sanctuary as designated by the Secretary of Commerce.

(d) **VESSEL TRAFFIC.**—Within 18 months after the date of enactment of this title, the Secretary of Commerce and the Secretary of Transportation, in consultation with the State of California and with adequate opportunity for public comment, shall report to Congress on measures for regulating vessel traffic in the Sanctuary if it is determined that such measures are necessary to protect sanctuary resources.

## **Sec. 2209. FLORIDA KEYS NATIONAL MARINE SANCTUARY**

(a) **IMPLEMENTATION.**—Section 8 of the Florida Keys National Marine Sanctuary and Protection Act (16 U.S.C. 1433 note) is amended by adding at the end the following new subsection:

**(d) IMPLEMENTATION.**—

(1) The Administrator of the Environmental Protection Agency and the Governor of the State of Florida shall implement the program required by this section, in cooperation with the Secretary of Commerce.

(2)(A) The Regional Administrator of the Environmental Protection Agency shall with the Governor of the State of Florida establish a Steering Committee to set guidance and policy for the development and implementation of such program. Membership shall include representatives of the Environmental Protection Agency, the National Park Service, the United States Fish and Wildlife Service, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Florida Department of Community Affairs, the Florida Department of Environmental Regulation, the South Florida Water Management District, and the Florida Keys Aqueduct Authority; three individuals in local government in the Florida Keys; and three citizens knowledgeable about such program.

(B) The Steering Committee shall, on a biennial basis, issue a report to Congress that—

(i) summarizes the progress of the program;

(ii) summarizes any modifications to the program and its recommended actions and plans; and

(iii) incorporates specific recommendations concerning the implementation of the program.

(C) The Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration shall cooperate with the Florida Department of Environmental Regulation to establish a Technical Advisory Committee to advise the Steering Committee and to assist in the design and prioritization of programs for scientific research and monitoring. The Technical Advisory Committee shall be composed of scientists from Federal agencies, State agencies, academic institutions, private non-profit organizations, and knowledgeable citizens.

(3)(A) The Regional Administrator of the Environmental Protection Agency shall appoint a Florida Keys Liaison Officer. The Liaison Officer, who shall be located within the State of Florida, shall have the authority and staff to—

(i) assist and support the implementation of the program required by this section, including administrative and technical support for the Steering Committee and Technical Advisory Committee;

(ii) assist and support local, State, and Federal agencies in developing and implementing specific action plans designed to carry out such program;

(iii) coordinate the actions of the Environmental Protection Agency with other Federal agencies, including the National Oceanic and Atmospheric Administration and the National Park Service, and State and local authorities, in developing strategies to maintain, protect, and improve water quality in the Florida Keys;

(iv) collect and make available to the public publications, and other forms of information that the Steering Committee determines to be appropriate, related to the water quality in the vicinity of the Florida Keys; and

(v) provide for public review and comment on the program and implementing actions.

(4)(A) There are authorized to be appropriated to the Administrator of the Environmental Protection Agency \$2,000,000 for fiscal year 1993, \$3,000,000 for fiscal year 1994, and \$4,000,000 for fiscal year 1995, for the purpose of carrying out this section.

(B) There are authorized to be appropriated to the Secretary of Commerce \$300,000 for fiscal year 1993, \$400,000 for fiscal year 1994, and \$500,000 for fiscal year 1995, for the purpose of enabling the National Oceanic and Atmospheric Administration to carry out this section.

(C) Amounts appropriated under this paragraph shall remain available until expended.

(D) No more than 15 percent of the amount authorized to be appropriated under subparagraph (A) for any fiscal year may be expended in that fiscal year on administrative expenses.

(b) **TECHNICAL AMENDMENT.**— Section 8(c) of the Florida Keys National Marine Sanctuary and Protection Act (16 U.S.C. 1433 note) is amended by striking "paragraph (10)" and inserting in lieu thereof "subsection(a)."

### **Subtitle C Hawaiian Islands Humpback Whale Sanctuary**

#### **Sec. 2301. SHORT TITLE**

This subtitle may be cited as the "Hawaiian Islands National Marine Sanctuary Act".

[NOTE: This subtitle was amended by section 7 of the National Marine Sanctuaries Preservation Act, Pub. L. 104-283. The full text of this Act can be found in Appendix C]

**THIS PAGE INTENTIONALLY LEFT BLANK**

## Appendix C

### *HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY ACT, SUBTITLE C OF PUBLIC LAW 102-587, AS AMENDED BY P.L. 104-283.*

**Sec. 2301. Short Title.**

This subtitle may be cited as the "Hawaiian Islands National Marine Sanctuary Act".

**Sec. 2302. Findings.**

The Congress finds the following:

- (1) Many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance and importance.
- (2) There are at present no ocean areas in the Hawaiian Islands designated as national marine sanctuaries or identified on the Department of Commerce's Site Evaluation List of sites to be investigated as potential candidates for designation as a national marine sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).
- (3) The Hawaiian Islands consist of 8 major islands and 124 minor islands, with a total land area of 6,423 square miles and a general coastline of 750 miles.
- (4) The marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.
- (5) The Department of Commerce recently concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there is preliminary evidence of biological, cultural, and historical resources adjacent to Kahoolawe Island to merit further investigation for national marine sanctuary status.
- (6) The Department of Commerce also concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there are additional marine areas within the Hawaiian archipelago which merit further consideration for national marine sanctuary status and that the national marine sanctuary program could enhance marine resource protection in Hawaii.
- (7) The Hawaiian stock of the endangered humpback whale, the largest of the three North Pacific stocks, breed and calve within the waters of the main Hawaiian Islands.
- (8) The marine areas surrounding the main Hawaiian Islands, which are essential breeding, calving, and nursing areas for the endangered humpback whale, are subject to damage and loss of their ecological integrity from a variety of disturbances.
- (9) The Department of Commerce recently promulgated a humpback whale recovery plan which sets out a series of recommended goals and actions in order to increase the abundance of the endangered humpback whale.
- (10) An announcement of certain Hawaiian waters frequented by humpback whales as an active candidate for marine sanctuary designation was published in the Federal Register on March 17, 1982 (47 FR 11544).
- (11) The existing State and Federal regulatory and management programs applicable to the waters of the main Hawaiian Islands are inadequate to provide the kind of comprehensive and coordinated conservation and management of humpback whales and their habitat that is available under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).
- (12) Authority is needed for comprehensive and coordinated conservation and management of humpback whales and their habitat that will complement existing Federal and State regulatory authorities.
- (13) There is a need to support, promote, and coordinate scientific research on, and monitoring of, that portion of the marine environment essential to the survival of the humpback whale.
- (14) Public education, awareness, understanding, appreciation, and wise use of the marine environment are fundamental to the protection and conservation of the humpback whale.
- (15) The designation, as a national marine sanctuary, of the areas of the marine environment adjacent to the main Hawaiian Islands which are essential to the continued recovery of the humpback whale is necessary for the preservation and protection of this important national marine resource.
- (16) The marine sanctuary designated for the conservation and management of humpback whales could be expanded to include other marine resources of national significance which are determined to exist within the

sanctuary.

**Sec. 2303. Definitions.**

In this subtitle, the following definitions apply:

- (1) The term "adverse impact" means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.
- (2) The term "Sanctuary" means the Hawaiian Islands Humpback Whale National Marine Sanctuary designated under section 2305.
- (3) The term "Secretary" means the Secretary of Commerce.

**Sec. 2304. Policy And Purposes.**

(a) **POLICY.**—It is the policy of the United States to protect and preserve humpback whales and their habitat within the Hawaiian Islands marine environment.

(b) **PURPOSES.**—The purposes of this subtitle are

- (1) to protect humpback whales and their habitat in the area described in section 2305(b);
- (2) to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;
- (3) to manage such human uses of the Sanctuary consistent with this subtitle and title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act; and
- (4) to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary designated in section 2305(a).

**Sec. 2305. Designation Of Sanctuary.**

(a) **DESIGNATION.**—Subject to subsection (c), the area described in subsection (b)(1) and any area included under subsection (b)(2) are designated as the Hawaiian Islands Humpback Whale National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1451 et seq.), as amended by this title.

(b) **AREA INCLUDED.**—

(1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward of the upper reaches of the wash of the waves on shore—

- (A) to the 100-fathom (183-meter) isobath adjoining the islands of Lanai, Maui, and Molokai, including Penguin Bank but excluding the area within 3 nautical miles of the upper reaches of the waves on the shore of Kahoolawe Island;
- (B) to the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward; and
- (C) to the 100-fathom (183-meter) isobath adjoining the Kilauea National Wildlife Refuge on the island of Kauai.

(2) (A) Within 6 months after the date of receipt of a request in writing from the Kahoolawe Island Reserve Commission for inclusion within the Sanctuary of the area of the marine environment within 3 nautical miles of the mean high tide line of Kahoolawe Island (in this section referred to as the 'Kahoolawe Island waters'), the Secretary shall determine whether those waters may be suitable for inclusion in the Sanctuary.

(B) If the Secretary determines under subparagraph (A) that the Kahoolawe Island waters may be suitable for inclusion within the Sanctuary --

- (i) the Secretary shall provide notice of that determination to the Governor of Hawaii; and
- (ii) the Secretary shall prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion in accordance with this Act, the National Marine Sanctuaries Act, and the National Environmental Policy Act of 1969.

(3) The Secretary shall generally identify and depict the Sanctuary on National Oceanic and Atmospheric Administration charts. Those charts shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration. The Secretary shall update the charts to reflect any boundary

modification under subsection (d), and any additional designation under paragraph (2) of this subsection.

**(c) EFFECT OF OBJECTION BY GOVERNOR.—**

(1)(A) If, within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 2306, the Governor of Hawaii certifies to the Secretary that the management plan, the implementing regulations, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(B) If the Secretary considers that an action under subparagraph (A) will affect the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate the designation under subsection (a). At least 30 days before that termination, the Secretary shall submit written notice of the termination to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2)(A) If, within 45 days after the Secretary issues the documents required under subsection (b)(2)(B)(ii), the Governor of Hawaii certifies to the Secretary that the inclusion of the Kahoolawe Island waters in the Sanctuary or any term of that inclusion is unacceptable--

(i) the inclusion or the term shall not take effect; and

(ii) subsection (b)(2) shall not apply during the 3-year period beginning on the date of that certification.

(B) If the Secretary considers that an action under subparagraph (A) regarding a term of the inclusion of the Kahoolawe Island waters will affect the inclusion or the administration of the Kahoolawe Island waters as part of the Sanctuary in such a manner that the policy or purposes of this title cannot be fulfilled, the Secretary may terminate that inclusion.

**(d) BOUNDARY MODIFICATIONS.—**No later than the date of issuance of the draft environmental impact statement for the Sanctuary under section 304(a)(1)(C)(vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a)(1)(C)(vii)), the Secretary, in consultation with the Governor of Hawaii, if appropriate, may make modifications to the boundaries of the Sanctuary as necessary to fulfill the purposes of this subtitle. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications.

**Sec. 2306. Comprehensive Management Plan.**

**(a) PREPARATION OF PLAN.—**The Secretary, in consultation with interested persons and appropriate federal, State, and local government authorities, shall develop and issue not later than 18 months after the date of enactment of this title a comprehensive management plan and implementing regulations to achieve the policy and purposes of this subtitle. In developing the plan and regulations, the Secretary shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434), as amended by this title. Such comprehensive management plan shall—

- (1) facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of the protection of humpback whales and their habitat;
- (2) set forth the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary and the State of Hawaii;
- (3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and their habitat;
- (4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 2307 of this subtitle and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);
- (5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary; and
- (6) promote education among users of the Sanctuary and the general public about conservation of humpback whales, their habitat, and other marine resources.



(b) **PUBLIC PARTICIPATION.**—The Secretary shall provide for participation by the general public in development of the comprehensive management plan or any amendment thereto.

**Sec. 2307. Limitation on User Fees.**

(a) **Limitation:** The Secretary shall not institute any user fee under this Act or the National Marine Sanctuaries Act for any activity within the Hawaiian Islands National Marine Sanctuary or any use of the Sanctuary or its resources.

(b) **User Fee Defined:** In this section, the term 'user fee' does not include--

- (1) any fee authorized by section 310 of the National Marine Sanctuaries Act;
- (2) any gift or donation received under section 311 of that Act; and
- (3) any monetary or in-kind contributions under section 316 of that Act.

**Sec. 2308. Authorization of Appropriations.**

For carrying out this subtitle, there are authorized to be appropriated to the Secretary \$500,000 for fiscal year 1993 and \$300,000 for fiscal year 1994. Of the amounts appropriated under this section for fiscal year 1993—

- (1) not less than \$50,000 shall be used by the Western Pacific Regional Team to evaluate potential national marine sanctuary sites for inclusion on the Department of Commerce's Site Evaluation List; and
- (2) not less than \$50,000 shall be used to continue the investigation of biological, cultural, and historical resources adjacent to Kahoolawe Island.

## **Appendix D**

### **HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY ADVISORY COUNCIL CHARTER**

#### **INTRODUCTION**

The mission of the National Marine Sanctuary Program (NMSP) is to manage ocean, coastal and Great Lakes areas of special national, and sometimes international, significance to protect their ecological and cultural integrity for the benefit of current and future generations. As the principal steward of coastal and ocean resources, the National Oceanic and Atmospheric Administration's (NOAA) Sanctuaries and Reserves Division (SRD) manages national marine sanctuaries using ecologically sound principles of resource conservation; develops and implements stewardship, education and research programs that foster public understanding, support, and participation; and promotes the ecologically sustainable use of the Nation's natural and cultural marine resources. The NMSP provides leadership and acts as a catalyst to link the assets and resources of governmental and non-governmental organizations to focus people's attention on the need to effectively and efficiently manage and protect marine resources.

The Hawaiian Islands Humpback Whale National Marine Sanctuary (the Sanctuary) was designated by an Act of Congress (Title II, Subtitle C, Public Law 102-587, Hawaiian Islands National Marine Sanctuary Act or Act) to recognize the importance of Hawaii's nearshore waters which serve as the winter breeding, calving and nursing habitat essential to the long-term survival and recovery of the North Pacific stock of the endangered humpback whale (*Megaptera novaeangliae*). The Sanctuary, working in partnership with the State of Hawaii, its governments and citizens, will function to provide the protection needed to ensure that the whales and their habitat are safe from harm and harassment while continuing to meet the needs of marine users of an insular state. The Sanctuary is of national and international significance and the NOAA will exercise its stewardship role with all affected interests in a manner which ensures the continuing needs of the humpback whale and coastal and marine resource users. To this end, it is incumbent on NOAA to solicit the valuable input of these many diverse interests through the establishment of the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, pursuant to Section 315 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. §1445a.

The Act established the Sanctuary for the following purposes:

- (1) to protect the North Pacific population of Humpback Whales and their habitat within the Sanctuary;
- (2) to educate and interpret for the public the relationship of Humpback Whales to the Hawaiian Islands marine environment;
- (3) to manage human uses of the Sanctuary consistent with the Act and the NMSA, as amended; and
- (4) to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

As identified by the Act, the comprehensive management plan for the Sanctuary shall:

- (1) facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of the protection of humpback whales and their habitat;
- (2) set forth the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary and the State of Hawaii;

- (3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and their habitat;
- (4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 2307 of this subtitle and section 313 of the NMSA (16 U.S.C. §1444);
- (5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary; and
- (6) promote education among users of the Sanctuary and the general public about conservation of humpback whales, their habitat, and other marine resources.

## ESTABLISHMENT

Under Section 315 of the NMSA, 16 U.S.C. § 1445a, the Secretary of Commerce is authorized to establish Sanctuary advisory councils to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, hereby establishes the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council ("Council").

## OBJECTIVES AND DUTIES

1. The Council, in accordance with the Act, shall provide advice and recommendations to SRD, through the Sanctuary Manager<sup>1</sup> regarding the management of the Hawaiian Islands Humpback Whale National Marine Sanctuary ("Sanctuary").
2. The Council shall act solely as an advisory body. Nothing in this Charter constitutes authority to perform operational or management functions, or to represent or make decisions on behalf of the Sanctuary or NOAA.
3. The Council shall draw on the expertise of its members and other sources in order to provide advice and recommendations.
4. The Council may serve as a forum for consultation and deliberation among its members and as a source of advice to the Sanctuary Manager. Such advice shall fairly represent the collective and individual views of the Council members.

## MEMBERS AND CHAIRS

The Council shall consist of no more than twenty-five (25) voting members who shall be appointed by the Director, after consultation with the Office of the Governor, from among persons employed by Federal, State or Local government agencies with expertise in management of natural resources, members of the Western Pacific Fishery Management Council, representatives of native Hawaiian groups, local user groups, representatives from adjacent counties, conservation and other public interest organizations, scientific and educational organizations, and members of the public interested in the protection and multiple use management of Sanctuary resources. The membership is designed to be balanced in terms of interests represented, geographic representation, and advisory functions the Council will perform.

There are two categories of seats for which voting members are appointed:

---

<sup>1</sup> The NOAA on-site liaison will serve in place of the Sanctuary Manager until such a position is created and filled.

### 1. Government (10 members):

By virtue of the shared functional responsibilities of Federal and State jurisdictions in the implementation of Sanctuary-related management, each of the following government entities shall be requested to designate one individual to serve on the Council. (Of the numerous responsibilities encompassed within each entity, the specific functional area of expertise needing representation is identified in parenthesis):

**State of Hawaii (6):** State Planning (marine and coastal coordination and planning); Department of Health (water quality management & monitoring); Department of Land and Natural Resources (aquatic resources, marine conservation areas, boating, enforcement); Department of Business, Economic Development and Tourism (marine recreation, development & tourism); Kahoolawe Island Reserve Commission (resource management on and around Kahoolawe); Department of Education (marine education).

**Federal (4):** U.S. Army Corps of Engineers (water quality, dredge disposal & alteration of seabed); U.S. Coast Guard (oil spills, enforcement); National Marine Fisheries Service (protected species, enforcement); Western Pacific Regional Fisheries Management Council (fisheries management).

### 2. Non-government (15 members):

A representative of each of the following interest groups or activities, which are integrally affected by the management goals of the Sanctuary, will be selected: County-specific representatives<sup>2</sup> (4); native Hawaiian (1); research (1); education (1); conservation (1); whale watching (1); business/commerce (1); ocean recreation (1); fishing (1); tourism (1); citizen-at-large (2).

*NOTE: NOAA recognizes that all of the non-government user/interest groups are comprised of many different individuals and organizations, each representing specific interests. The selected representative of each group will be encouraged to make concerted efforts to identify, contact and coordinate with all the diverse organizations and individuals comprising the respective group.*

## SELECTION PROCEDURES

The following procedures shall govern the application, nomination and appointment of Council voting members.

### (1) Initial Selection:

(a) Applications: To be considered for one of the 15 non-governmental seats on the Council, interested individuals must submit a completed application to the Sanctuary Manager indicating their particular interest, qualifications, and experience.

(b) Panel Selection: In seeking to ensure that the aforementioned user groups and activities have a voice on the Council and that a balance in interests and geographic representation is realized, a candidate Selection Panel (Panel) will be formed using the recommendations from members of the State-administered Sanctuary Working Group (SWG). To assure balanced representation, two

---

<sup>2</sup> County-specific representatives: Each of the four counties (Kauai, Honolulu, Maui, and Hawaii) will have a non-governmental individual to represent the concerns of that county. This individual will establish a county-specific working group and coordinate and consolidate the various views and concerns of the citizens of that particular county and present them to the Council. The county groups shall include the County governments and involve the expertise of the individual county Coastal Zone Managers.

panel members will be SWG government representatives and two will be SWG private-sector representatives. The fifth panel member will be the SWG member who receives the next highest number of total votes. In the event that an elected member chooses not to serve on the selection panel, the person with the next highest number of votes in that category (government or non-government) will be asked to serve. Once selected, panel members may not substitute other persons in their place.

All applications sent to the Sanctuary Manager will be forwarded to the Selection Panel, which will evaluate the applicants and submit to the Sanctuary Manager a list identifying three candidates for each of the 13 non-government special interest and county-specific seats (39 total). All remaining candidates will be considered for the two citizen-at-large seats. SWG members who serve on the Panel are eligible to be considered as one of the three candidates for selection on the new Council if they submit an application and are selected by the Panel. However, that Panel member may not vote on his or her own application.

(c) **Final Candidate Selection:** Final selection of the 13 non-government special interest and county-specific Council members will be made from the candidate Selection Panel list (3 names for each seat) by the Sanctuary Manager and the Office of State Planning (OSP) with the concurrence of SRD. The Sanctuary Manager and OSP, with the concurrence with SRD, will also choose the two citizen-at-large seats from among those two out of three candidates that were not selected for the special interest and county-specific seats, as well as those candidates that applied for citizen-at-large seats. Final approval of all Council members is by the Director of the Office of Ocean and Coastal Resource Management.

The non-governmental members will be appointed for a term of two years and may be reappointed. During the initial term, however, SAC membership may change based upon the final Sanctuary boundary as reflected in the approved Final Environmental Impact Statement/Management Plan (FEIS/MP) for the Sanctuary. If necessary, terms of appointment may be changed to provide for balanced (staggered) expiration dates or to better reflect the final boundary as detailed in the FEIS/MP. Vacancy appointments are for the remainder of the unexpired term of the vacancy. Governmental members serve at the discretion of their agency or entity and do not have a term limit.

## (2) Subsequent Appointments:

The candidate Selection Panel will be terminated after the initial round of selections. For subsequent appointments, public notice shall be provided as to the vacancy of non-governmental Council seat(s). Interested candidates will be required to submit written applications stating their particular interest, qualifications, and experience. Guidelines for applying will be supplied at the appropriate time. Applications for all vacant Council seats will be submitted directly to the Sanctuary Manager.

Copies of all applications for each seat will be submitted by the Sanctuary Manager to the Council, which will act as the preliminary reviewing body for screening applications for evaluation. The Council will recommend three candidates for each seat (if three are available) and submit the names to the Sanctuary Manager. Any Council member that has a conflict of interest (financial, personal, self nomination, etc.) shall excuse him/herself from making a selection for the vacant seat. Selection from among those recommended by the Council, or from among other applicants, will be made by the Sanctuary Manager, in close consultation with the Governor's Office, with the concurrence of the Sanctuaries and Reserves Division, and final approval by the Director of the Office of Ocean and Coastal Resource Management.

### (3) Council Officers:

The Council shall elect one member to serve as Chair, one member to serve as Vice-Chair, and one member to serve as Secretary. Election for all positions is by majority vote of all Council members. Members who will not be present at the time of the election may submit their vote in writing to the Sanctuary Manager prior to the meeting.

The term of all officers (Chair, Vice-Chair, and Secretary) is one year. The Chair and Vice-Chair may not serve consecutive terms.

The Chair shall preside over meetings of the Council and shall, along with the Sanctuary Manager, approve the location, times, and agendas of the meetings. The Vice Chair shall act as the Chair in the absence of the Chair. The Secretary shall be responsible for taking the official attendance at each SAC meeting; working with Sanctuary staff in taking and distributing minutes of each SAC meeting; recording official votes, as necessary; and working with Sanctuary staff to prepare a yearly report of the Council's activities to be submitted to the Sanctuary Manager.

### (4) Removal from Council:

The Director may remove a non-governmental member of the Council if it is found that the member has violated one or more terms of this Charter. The Director may consult with the Council prior to taking such an action. If a Council member fails to attend three consecutive meetings, he or she will be removed from the Council and the seat opened for nominations for a new representative.

If a government agency willingly decides to no longer participate as a member of the Council, has violated one or more terms of this Charter, fails to attend three consecutive meetings and/or is removed by the Director, the Sanctuary Manager will invite another appropriate agency to replace that agency on the Council.

## **SCOPE OF RESPONSIBILITIES**

1. **Resource protection:** The Council may advise the Sanctuary Manager on the effectiveness of interagency agreements, permit review and coordination, and on the effectiveness of the Sanctuary regulations in providing adequate resource protection.
2. **Research:** The Council may advise the Sanctuary Manager on priority research and monitoring needs, proposals, and reports.
3. **Education:** The Council may advise the Sanctuary Manager on enhancing public awareness, understanding, and wise use of the marine environment and on the development of an informed constituency.
4. **General Administration:** The Council may advise, at the request of the Sanctuary Manager, on proposal(s) for activities within the Sanctuary, and on proposals for activities outside of, but affecting, the Sanctuary. It may also include advice on planning for the use, development, and maintenance of Sanctuary lands and buildings and equipment.
5. **Program Modifications:** The Council's advice will be sought in the process to identify other resources of national significance which may be considered for future inclusion in the Sanctuary; the review of any new regulations or modification of existing regulations developed pursuant thereto or for any other purpose based on new findings or future needs; the review of issues relating to boundary changes including the waters off the Island of Kahoolawe; and for necessary modifications to the management plan.

## ADMINISTRATION

1. Members of the Council shall serve without pay except that each member receives travel expenses including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of Title 5, U.S.C., for travel to and from official Council meetings. Travel expenses for government members of the Council may be provided by their own agencies.
2. The Sanctuary Manager may make available such staff, information, administrative services, or assistance as the Sanctuary Manager determines are reasonably required to enable the Council and its subcommittees and working groups to carry out their functions.

## OPERATION

### 1. Conduct of Individual Members:

- (a) No Council member may use or allow the use of, for other than official purposes, information obtained through or in connection with his or her Council affiliation that has not been made available to the general public.
- (b) No Council member may represent himself or herself as a Council member to make recommendations, express opinions, or otherwise speak on a matter of the HIIHWNMS without Council and Sanctuary Manager approval.
- (c) Any Council member that has a conflict of interest (financial, personal, professional, etc.) in any matter before the Council or its subcommittees or working groups shall recuse himself or herself from any action on that matter including discussion and voting actions.
- (d) If any Council member's participation in any matter before the Council or its subcommittees or working groups creates the appearance of impropriety, that Council member shall recuse himself or herself from any action on that matter including discussion and voting actions.

### 2. Conduct of the Council as a Body:

All communications that are intended to speak for the Council as a body must be coordinated with, and approved by, the Chair. All communications must pertain to Sanctuary business.

### 3. Council Letterhead:

The Council shall, with the assistance and approval of the Sanctuary Manager, design and use its own letterhead that contains the following disclaimer: "The Council is solely an advisory body. These opinions and findings do not necessarily reflect the position of the Hawaiian Islands Humpback Whale National Marine Sanctuary and the National Oceanic and Atmospheric Administration." All correspondence from the Chair or other members of the Council, or the Council as a body, shall be upon this letterhead.

### 4. Subcommittees and Working Groups:

- (a) Subcommittees: The Council may establish such subcommittees as necessary to fulfill its duties. Subcommittees will be composed solely of members of the Council and will be recognized as official subunits of the Council. Subcommittees are subject to the requirements of this Charter.
- (b) Working Groups: Working groups may be established by the Council with the approval of the

Sanctuary Manager for general purposes such as research and education, or for specific purposes or topics that need more focused attention that cannot be accomplished by a subcommittee (e.g., County-specific representation). Working groups are composed of members of the Council and persons outside the Council. Individuals with an interest or expertise in the subject area or issue to be focused on by a working group may be a member of the working group. Working groups shall be chaired by a member of the Council and will function under the purview of the Council. Working groups established by the Council to address short-term specific issues shall disband once the final recommendation on the particular matter is submitted to the Council. Working groups shall provide a general report to the Chair of the status of requested recommendations at each meeting of the Council. Working groups will provide their recommendations to the Sanctuary Manager and staff and the Council only. Any working group member that has a conflict of interest (financial, personal, professional, etc.) in any matter before the working group shall recuse himself or herself from any action on that matter including discussion and voting actions.

**5. Alternates:** An alternate (from the same government entity) of a government Council member may attend a Council meeting on occasion if the Chair of the Council is notified in advance of any meeting at which an alternate will represent the Council member, including the name, address, and position of the individual designated. An alternate may not name another alternate. Alternates may not be appointed for non-governmental seats.

**6. Role of the Sanctuary Manager:** The Sanctuary Manager sits as a non-voting member of the Council, approves each meeting, and approves the agenda as well as potential presentations for each meeting. No meetings may be conducted in the absence of the Manager or his/her designee.

**7. Meetings:**

(a) Meetings are held at the call of the Chair, with the approval of the Sanctuary Manager.

(b) Decisions and recommendations made by the Council are advisory only, and shall be made by majority vote of those present. A vote may only occur if a quorum of members are present. For the purposes of this Council the quorum is considered to be two-thirds, or seventeen, of its members. A recorded vote may be requested by the Chair or the Sanctuary Manager.

(c) Each meeting shall be open to the public.

(d) Members of the public shall be permitted the opportunity to present oral or written statements pertaining to agenda items.

(e) Emergency meetings may be held at the call of the Chair, with the approval of the Sanctuary Manager.

(f) Timely notice of each meeting, including the time, place, and agenda of each meeting, shall be published in at least one local newspaper of general circulation within the vicinity of the Sanctuary and in the *Federal Register*, and additional notice may be given by such other means as will result in appropriate public notice to interested groups.

(g) The Council shall meet as frequently as necessary, not to exceed once per month, but at least once every six months. The Council meeting place shall be chosen to accommodate anticipated public attendance and to be reasonably accessible to those interested in attending.

(h) Minutes of each meeting shall be prepared by Sanctuary staff and retained by the Council Secretary and contain a summary of attendees and matters discussed; such minutes shall be available to the public.

(i) A yearly report shall be prepared by Sanctuary staff in cooperation with the Council Secretary,



summarizing issues addressed and actions taken during the previous year.

8. Procedures for Providing Advice: The following procedures shall be used to provide advice:

- (a) Requests for information, assistance, or advice from the Sanctuaries and Reserves Division, other NOAA offices, or other agencies shall be made in writing and will be coordinated through, and approved by, the Sanctuary Manager.
- (b) The Council acts under the auspices of the Director of the Office of Ocean and Coastal Resource Management. Any matters that the Council would like to raise independently must be approved by the Sanctuary Manager prior to doing so.
- (c) The Council shall provide advice directly to the Sanctuary Manager via a formal written recommendation. Draft recommendations and verbal discussions will not be considered official advice from the Council, but may be considered as background information.
- (d) The Council may base their recommendations on a vote of the Council with negative votes and abstentions noted, or on a general consensus reached during discussions, with minority opinions and views noted.
- (e) Any information or recommendations resulting from discussions in subcommittees or working groups must be presented to and approved by the full Council prior to being submitted to the Sanctuary Manager.

### TERMS OF THE CHARTER

- 1. The Council shall operate pursuant to the terms of this Charter.
- 2. This Charter shall remain in effect for a period of five years from the date of the Director's signature.
- 3. Six months prior to the expiration of this Charter, the need for the Council will be evaluated by the Sanctuaries and Reserves Division to determine whether to renew the Charter.
- 4. Revisions to the Charter may be made as determined necessary by the Sanctuaries and Reserves Division.

*Original signed by J. Benoit on 2/5/96*

\_\_\_\_\_  
Jeffrey R. Benoit  
Director  
Office of Ocean and Coastal Resource Management

\_\_\_\_\_  
Date

## HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY ADVISORY COUNCIL CHARTER

### AMENDMENT #1

The following revisions are made to the Charter as signed on February 5, 1996:

**MEMBERS AND CHAIRS** (page 3) is revised to read as follows:

The Council shall consist of no more than twenty-four (24) voting members and one (1) non-voting member (the National Marine Fisheries Service) who shall be appointed by the Director, after consultation with the Office of the Governor, from among persons employed by Federal, State, or county government agencies with expertise in management of natural resources, members of the Western Pacific Fishery Management Council, representatives of Native Hawaiian groups, local user groups, representatives from adjacent counties, conservation and other public interest organizations, scientific and educational organizations, and members of the general public interested in the protection and multiple use management of Sanctuary resources. The membership is designed to be balanced in terms of interests represented, geographic representation, and advisory functions the Council will perform.

**SELECTION PROCEDURES, (4) Removal from Council** (page 6): the first paragraph is revised to read as follows:

The Director may remove a non-governmental member of the Council if it is found that the member has violated one or more terms of this Charter. The Director may consult with the Council prior to taking such an action. If a Council member fails to attend three consecutive meetings, he or she will be removed from the Council and the seat opened for nominations for a new representative. Until such time that the Final Environmental Impact Statement and Management Plan (FEIS/MP) is approved by the Governor of Hawaii and the Secretary of Commerce, the requirement to attend three consecutive meetings will be waived. However, persons should contact the SAC Chair or the Sanctuary Manager at least 24 hours prior to the scheduled meeting for which they are unable to attend.

**OPERATION, 7. Meetings** (page 10): paragraph (g) is revised to read as follows:

(g) Until such time that the FEIS/MP is approved by the Governor of Hawaii and the Secretary of Commerce, the Council shall meet as frequently as deemed necessary by the Sanctuary Manager and the Chair. After the approval of the FEIS/MP the Council shall meet as frequently as necessary, not to exceed once per month, but at least once every six months. The Council meeting place shall be chosen to accommodate anticipated public attendance and to be reasonably accessible to those interested in attending.

Except as herein amended, modified, or changed, all other terms of the Charter will remain in full force and effect.

*Original signed by J. Benoit on 4/11/96*

\_\_\_\_\_  
Jeffrey R. Benoit  
Director  
Office of Ocean and Coastal Resource Management

\_\_\_\_\_  
Date

**Hawaiian Islands Humpback Whale  
National Marine Sanctuary  
Advisory Council Membership**

Mr. Allen Tom  
NOAA-SRD Hawaii Liaison  
(non-voting)

Mr. Jim McCallum  
National Marine Fisheries Service  
(non-voting)

**State and Federal Representatives:**

Mr. Rick Egged  
Director, Office of Planning

Mr. Francis Oishi  
Department of Land and Natural Resources

Dr. Craig McDonald  
Department of Business,  
Economic Development and Tourism

Ms. June Harrigan  
Department of Health,  
Environmental Planning Office

Mr. Marc Hodges  
Kahoolawe Island Reserve Commission

Mr. Glenn Soma  
Department of Transportation

Mr. William Lennan  
U.S. Army Corps of Engineers

Lt. Michael Neininger  
14th Coast Guard District

Mr. Robert Schroeder  
Western Pacific Regional Fisheries  
Management Council

**County/Interest Representatives:**

Ms. Beth Goodoni  
Hawaii County

Ms. Maile Bay  
Honolulu County

Mr. Claud Sutcliffe  
Maui County

Dr. Walter Haas  
Kauai County

Mr. James Coon  
Business / Commerce :

Ms. Hannah Bernard  
Conservation

Ms. Donna Liddicoat  
Education

Mr. Herman Chong, Jr.  
Fishing

Ms. Thelma Kia-Shimaoka  
Native Hawaiian

Mr. Skip Weinstein  
Ocean Recreation

Dr. Paul Nachtigall  
Research

Ms. Jan Pinney  
Tourism

Mr. Stan Butler  
Whale Watch

Dr. Louis Herman  
Citizen-at-large

Mr. Greg Kaufman  
Citizen-at-large

## **Appendix E**

### **Agreements for Coordinated Management of the Hawaiian Islands Humpback Whale National Marine Sanctuary**

Memorandum of Understanding Between the Sanctuaries and  
Reserves Division and the National Marine Fisheries Service  
Regarding Permit Review and Consultation ..... 363

Draft Memorandum of Understanding Between the Sanctuaries  
and Reserves Division and the State Departments of Health and  
Land and Natural Resources Regarding Permit Review (under  
development) ..... 367

Memorandum of Understanding between NOAA, U.S. Coast  
Guard, and DLNR-DOCARE Regarding the Deputization for  
Enforcement ..... 373

THIS PAGE INTENTIONALLY LEFT BLANK

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE NATIONAL MARINE FISHERIES SERVICE  
AND THE NATIONAL OCEAN SERVICE  
CONCERNING PERMITS AND CONSULTATION FOR ACTIVITIES THAT AFFECT THE  
HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY**

**I. INTRODUCTION**

The National Marine Fisheries Service (NMFS) and the National Ocean Service (NOS) have significant roles in the protection and management of humpback whales and their habitat in Hawaii. The roles of NMFS and NOS in the processes of designation, implementation, and operation of National Marine Sanctuaries are provided for in the 1992 and 1993 Memoranda of Understanding concerning the National Marine Sanctuary Program (1992 and 1993 MOUs) entered into by the Assistant Administrators for NMFS and NOS. Inasmuch as NMFS has responsibility for protection and management of the humpback whale under the Marine Mammal Protection Act of 1972 (MMPA), as amended, and the Endangered Species Act of 1973 (ESA), as amended, and the Sanctuaries and Reserves Division (SRD), within the Office of Ocean and Coastal Resource Management (OCRM), administers the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary) under the Hawaiian Islands National Marine Sanctuary Act (HINMSA) and the National Marine Sanctuaries Act (NMSA), close cooperation and coordination are essential in carrying out the respective functions and responsibilities of these two agencies.

Primary responsibility under these laws with respect to permits and consultations have been delegated to or are carried out by the Office of Protected Resources (OPR) within NMFS and by SRD within NOS.

In furtherance of the 1992 MOU, this Agreement sets forth specific procedures by which OPR and SRD will cooperate and coordinate on the issuance of permits and other authorization, and with respect to consultations under the ESA, MMPA, HINMSA, and NMSA, for activities in Hawaii that may affect humpback whales or their Sanctuary habitat.

Pursuant to section II of this MOU, OPR will cooperate and coordinate with SRD concerning the issuance of permits and other authorizations under the ESA and MMPA for activities in Hawaii that may affect humpback whales or their Sanctuary habitat. OPR issues permits and authorizations under the ESA and MMPA for activities affecting the humpback whale (e.g., research). The Sanctuary regulations do not contain provisions for the issuance of Sanctuary permits or other authorizations at this time. SRD will cooperate and coordinate with OPR if permit regulations or procedures for other authorizations are developed in the future.

Pursuant to section III of this MOU, OPR and SRD also will cooperate and coordinate with respect to consultations required under section 304(d) of the NMSA and section 7 of the ESA for Federal activities that may affect humpback whales or their Sanctuary habitat.

**II. PERMITS**

- A. "Application for permit" as used in this agreement includes an application for a permit or request for an authorization under the ESA or MMPA, including an application or request for an initial permit or authorization, application or request for a permit or authorization renewal, and an application or request for a significant permit or

authorization modification. A significant permit or authorization modification would alter the number, the species, or the type of takings that would be authorized and/or for which publication of notice in the Federal Register would be required.

**B. Consistent with Section A. 4) of the 1992 MOU, SRD will do the following:**

1. SRD will review applications for permits under the MMPA and ESA and provide comments to OPR during the public comment period, including comments concerning proposed permit conditions and other recommendations;
2. In instances where issuance of an MMPA or ESA permit may be in conflict with NMSA or HIHWNMS requirements, regulations or policies issued or established under those Acts, SRD will provide early, informal notification to OPR so that recommendations, including recommendations for alternative methods, areas, or other options and for mitigation measures may be considered. If appropriate, OPR will communicate those recommendations to the permit applicant.

**C. Consistent with Sections B. 4) of the 1992 MOU, OPR will do the following:**

1. OPR will notify SRD when an application for a permit has been received for proposed activities that may affect humpback whales or their Sanctuary habitat in Hawaii;
  2. OPR will provide SRD with a copy of each completed application for a permit for activities that may affect humpback whales or their Sanctuary habitat; OPR will provide this copy to SRD at the same time or before any notice is filed with the Office of the Federal Register concerning the application for a permit;
  3. OPR will issue, condition, or deny issuance of, as appropriate, permits or authorizations under the ESA or MMPA for activities that may affect humpback whales or their Sanctuary habitat in Hawaii in coordination with SRD comments, including comments concerning proposed conditions and other recommendations;
  4. OPR will provide to SRD, as appropriate, written responses to comments, proposed conditions and other recommendations which were not incorporated or addressed in permits or authorizations issued under the ESA or MMPA for activities that may affect humpback whales or their Sanctuary habitat in Hawaii.
- D. Should HIHWNMS regulations or procedures for the issuance of Sanctuary permits or other authorizations be developed in the future, this MOU may be modified to include procedures by which SRD will cooperate and coordinate with OPR in the review and issuance of such permits and authorizations.**

### **III. CONSULTATION**

- A. Federal agencies are subject to the consultation requirements of section 7 of the ESA, and implementing regulations at 50 C.F.R. Part 402, for Federal actions that may affect humpback whales, and section 304(d) of the NMSA, HIHWNMS regulations at 15 C.F.R. § 945.8, for Federal agency actions internal or external to the Sanctuary (including private activities authorized by licenses, leases, or permits) that are likely to destroy, cause the loss of, or injure any Sanctuary resource. Humpback whales and their Sanctuary habitat are Sanctuary resources.**

- B. While recognizing that the consultation requirements of the two statutes differ, OPR and SRD agree to cooperate and coordinate, to the maximum extent possible, with respect to the ESA and NMSA consultation procedures for activities pertaining to the humpback whales and their Sanctuary habitat in Hawaii.
1. If an agency attempts to initiate consultation under section 304(d) of the NMSA with respect to proposed activities that are likely to destroy, cause the loss of, or injure a humpback whale or its Sanctuary habitat in Hawaii, SRD will notify OPR and encourage the agency to initiate section 7 consultation on the proposed activity. SRD will also inform the agency that the NOAA point of contact for such consultations is the NMFS Southwest Region, Pacific Area Office.
  2. When consultation under section 7 of the ESA is initiated for activities that may affect humpback whales or their Sanctuary habitat in Hawaii, OPR will notify SRD so that SRD may be kept apprised of proposed relevant Federal agency actions. OPR will coordinate with SRD to ensure any Sanctuary concerns are addressed during the section 7 consultation.
  3. If OPR or the relevant Federal agency determines that the proposed action may adversely affect humpback whales (directly or indirectly), OPR will forward copies of all information on the proposed action to SRD for review and consultation under section 304(d) of the NMSA. OPR and SRD will coordinate and cooperate throughout the consultation process.
  4. Upon completion of coordinated consultation, NOAA will provide the action agency with a coordinated response which satisfies both ESA and NMSA requirements which will include any appropriate recommendation(s), mitigation measure(s) and a biological opinion.
  5. The NMFS Southwest Region, Pacific Area Office, will serve as the NOAA contact point for agencies undergoing section 304(d) consultation for activities that are likely to destroy, cause the loss of, or injure a humpback whale or its Sanctuary habitat in Hawaii.

#### **IV. POINTS OF CONTACT**

Within thirty (30) days from the effective date of this MOU, the Director of OPR and Chief of SRD shall identify in writing the points of contact within their respective offices for coordinated permit reviews and consultations consistent with this agreement.

#### **V. PERIOD**

This agreement will become effective on the date of the last signature of the approving official of either party and will continue in force for ten years.

#### **VI. MODIFICATION/CANCELLATION PROVISION**

This MOU may be amended at any time by mutual written consent of the parties. This MOU will be reviewed periodically, but not less than annually. It may be canceled by either party with 60 days written notice.



## VII. OTHER PROVISIONS

Nothing herein is intended to conflict with current SRD or OPR directives or with any Federal or state laws, regulations, policies or directives. If the terms of this agreement are inconsistent with existing SRD or OPR directives, then these portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect.

At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation or implementation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the matter shall be forwarded to respective higher officials for appropriate resolution.

## VIII. APPROVED

*Original signed by R. Schmitten on 8/28/95*

\_\_\_\_\_  
Rolland A. Schmitten  
Assistant Administrator for Fisheries

\_\_\_\_\_  
Date

*Original signed by W.S. Wilson on 7/28/95*

\_\_\_\_\_  
W. Stanley Wilson  
Assistant Administrator for  
Ocean Services and Coastal  
Zone Management

\_\_\_\_\_  
Date

## **Appendix E**

**DRAFT  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
SANCTUARIES AND RESERVES DIVISION  
AND THE  
STATE OF HAWAII  
DEPARTMENT OF HEALTH AND  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

*Note to reviewers: This MOU is a working draft and is subject to further revision based on review by DLNR, DOH, and SRD.*

This Memorandum of Understanding (MOU) is between the Sanctuaries and Reserves Division (SRD), within the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC), and the Department of Health (DOH) and the Department of Land and Natural Resources (DLNR) both within the State of Hawaii (the State), jointly referred to as "the parties".

### **I. PURPOSE:**

The purpose of this MOU is to coordinate the efforts of SRD and the State to meet their common commitment to protecting and managing the endangered humpback whale (*Megaptera novaengliae*) and its habitat within the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary). The MOU specifically establishes mutually agreeable procedures for coordinated review of activities requiring permits from the State for proposed activities that may impact humpback whales, or their Sanctuary habitat.

### **II. BACKGROUND:**

The Hawaiian Islands Humpback Whale National Marine Sanctuary was designated on November 4, 1992, by the Hawaiian Islands National Marine Sanctuary Act. The Sanctuary covers an area of approximately XXX square nautical miles from the highwater mark seaward to the 100-fathom depth contour around portions of the main Hawaiian Islands.

The National Marine Sanctuary Program, administered by the Office of Ocean and Coastal and Resource Management's Sanctuaries and Reserves Division of the National Oceanic and Atmospheric Administration, seeks to protect, manage, and conserve the ecological, recreational, research, educational, historical, and aesthetic resources and qualities of coastal and marine areas designated as national marine sanctuaries.

The Hawaii State Department of Health (DOH) administers Federal and State pollution control laws in Hawaii in partnership with the U.S. Environmental Protection Agency (EPA) and through the authority of State pollution control laws as compiled in the Hawaii Revised Statutes, Chapters 339-344, 128D and 128E, and as implemented through current Hawaii Administrative Rules. Water pollution control permit programs authorized by the Federal Clean Water Act (CWA)

include the National Pollutant Discharge Elimination System (NPDES) Permit Program, fully delegated to the State by the U.S. EPA, and the CWA Section 401 Water Quality Certification Program, conducted jointly with the EPA and the U.S. Army Corps of Engineers' CWA Section 404 Permit Program for dredging and filling operations and the Rivers and Harbors Act, Section 10 program. DOH's environmental management programs contain both regulatory and non-regulatory components designed to limit discharge of pollutants to State waters from facilities (regulated entities), and from diffuse land-based sources (polluted runoff control, regulatory and non-regulatory components).

The Hawaii Department of Land and Natural Resources (DLNR) administers State conservation district lands, including submerged lands and overlying waters, surface and groundwaters, forestry, wildlife, and aquatic resources, park, historical, and recreational resources and activities (boating, hiking, etc.). Conservation district lands include all lands seaward of the shoreline to the limits of the State's jurisdiction and are governed by Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR) Chapter 13-5. Pursuant to HAR Chapter 13-5, there are "Identified Land Uses" (which includes alteration of seabed activities) that may require either no permit, a site plan approval, department permit, or a Board permit with/without a management plan.

An application for either a Board or Department permit for use of Conservation District Lands (Conservation District Use Application, or CDUA) would be required if there is a potential "land use" as defined by HAR Chapter 13-5. These include such identified land uses such as data collection, fishpond restoration, public purposes (e.g. outfalls, telecommunication cables), sanctuaries, existing or accessory structures, erosion control, seawalls and shoreline protection, artificial reefs, marine construction, mining, and extraction. DLNR also administers and enforces HRS and HAR governing boating and ocean recreation in State waters.

### III. REFERENCES AND AUTHORITIES:

NOAA/OCRM: The National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et. seq.*, and the Hawaiian Islands National Marine Sanctuary Act, Subtitle C, Title II of the Oceans Act of 1992 (P.L. 102-587). The final regulations implementing the HIHWNMS are found at 15 CFR Part 945. These regulations, *inter alia*, describe prohibited or otherwise regulated activities within the Sanctuary.

DOH: State laws pertaining to discharges to State waters and seabed alterations include: Hawaii Revised Statutes Chapter 342 D, Water Pollution, and Chapter 342E, Nonpoint Source Pollution Management and Control; Hawaii Administrative Rules, Chapter 11-54, Water Quality Standards, and Chapter 11-55, Water Pollution Control.

DLNR: State regulations pertaining to alteration of the seabed activities include: Hawaii Revised Statutes, Chapter 171 Management and Disposition of Public Lands, Chapter 183C State Conservation District, Chapter 190 Marine Life Conservation Program, Chapter 190D Ocean and Submerged Lands Leasing, and various Hawaii Administrative Rules under Title 13, Department of Land and Natural Resources.

#### **IV. GENERAL CONSIDERATIONS AND RESPONSIBILITIES OF THE PARTIES:**

- a. **The Parties** recognize that NOAA and the State will cooperatively manage and protect the North Pacific humpback whale stock and its habitat within State waters of the Sanctuary.
- b. **The Parties** agree that a higher degree of resource management and protection may be necessary than currently exists for the humpback whale and its habitat.
- c. **The Parties** agree to cooperatively work together to review proposed permits, plans, and projects in a manner that avoids delays in the issuance of permits or implementation of plans and projects.
- d. **The Parties** agree to work cooperatively to conduct, coordinate, and integrate any joint research and monitoring projects, and permit application review oversight.
- e. **The Parties** agree to work together to build non-duplicative databases and to allow the other access to specific databases, as they pertain to humpback whales and their habitat, for the purposes of resource management, research, and education.
- f. **The Parties** agree to defer emergency spill response and coordination to existing arrangements between the State and the Federal government, such as the Oceania Regional Response Team.
- g. **The Parties** agree to work together to monitor permittee compliance with the terms and conditions of State permits for activities also subject to Sanctuary regulations, and to coordinate the enforcement of violations of Sanctuary regulations and corresponding State regulations or permits, consistent with a separate enforcement agreement that will be developed by NOAA and the State.

#### **V. SPECIFIC RESPONSIBILITIES OF THE PARTIES:**

##### **a. SRD and the Hawaii Department of Health:**

##### **1. SRD shall:**

(i) provide comments to the Department of Health (DOH) within 30 days of receipt of the application for any DOH discharge permit [individual National Pollutant Discharge Elimination System (NPDES) or other, including general permits and Water Quality Certifications] based upon potential impacts to Sanctuary resources and qualities, or impacts on compatible uses of the Sanctuary, and impacts on NOAA's management of the Sanctuary; and

(ii) provide notice to DOH of, and allow for DOH's comments and participation on, Sanctuary water quality plans, coastal or marine resource management programs, or other similar Sanctuary documents or projects affecting State waters within the Sanctuary.

##### **2. DOH shall:**

(i) provide SRD with access to copies of current DOH discharge (NPDES or other) permits for all existing discharges into the Sanctuary;

(ii) provide SRD with timely notifications of DOH discharge (NPDES or other) permit applications, and upon request by SRD, a copy for comment within 15 business days from the date

applications are made for new permits or to renew, amend, or extend an existing permit for the following types of discharges -- *(to be filled in after Sanctuary boundaries have been selected)*

(iii) consider all reasonable recommendations regarding applications for DOH discharge permits provided by the Sanctuary on a timely basis, and notify SRD with reasons for any recommendation rejected by DOH; and

(iv) provide notice to SRD and allow for SRD's comments and participation regarding State water quality plans, coastal or marine resource management programs, or other similar State documents or projects affecting the Sanctuary.

**b. SRD and Hawaii Department of Land and Natural Resources**

**1. SRD shall:**

(i) provide comments to the Department of Land and Natural Resources (DLNR) within a timeframe that reflects various application processing periods for any permit authorizing alteration of seabed activities in the Sanctuary, based upon potential impacts to the humpback whale and its habitat, impacts on compatible uses of the Sanctuary, or impacts on NOAA's management of the Sanctuary; and

(ii) provide notice to DLNR and allow for DLNR's comments and participation on Sanctuary coastal or marine resource management programs, or other similar Sanctuary documents or projects affecting the Sanctuary.

**2. DLNR shall:**

(i) provide SRD with the various State criteria for requiring permit applications as they pertain to alteration of the seabed activities;

(ii) allow SRD access to permits on existing alteration of seabed activities in the Sanctuary, such as current DLNR Conservation District Use Permits;

(iii) notify SRD of applications made to DLNR for either new permits or proposed amendments, renewals, or extensions to existing permits that propose alteration of seabed activity;

(iv) consider all reasonable recommendations regarding applications for DLNR alteration of the seabed permits provided by the Sanctuary on a timely basis, and notify SRD with reasons for any recommendation rejected by DLNR; and

(v) provide notice to SRD of, and allow for SRD's comments on changes to the State of Hawaii's Administrative Rules as they pertain to humpback whales and their habitat, or other similar State documents or projects affecting the Sanctuary.

## **VI. SUBSIDIARY AGREEMENTS:**

Additional working agreements regarding specific cooperative efforts, if needed, shall be effected in writing by both agencies as the need arises.

## **VII. AMENDMENTS AND REVIEW:**

This agreement may be amended at any time by the written mutual consent of all the parties. It may be subject to reconsideration at such other times as may be required and as agreed to by the parties entering into this agreement.

## **VIII. OTHER PROVISIONS:**

Nothing herein is intended to conflict with current NOAA or State directives or applicable law. If the terms of this agreement are inconsistent with existing directives or with applicable law of either of the parties entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes deemed necessary will be accomplished by either an amendment to this agreement, or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

## **IX. TERM OF THE AGREEMENT:**

This agreement will become effective upon the signatures of the approving officials of the respective parties entering into this agreement, and will remain in effect for five years unless terminated by (1) mutual agreement, or (2) 120 days advance written notice by either party.

**UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Appendix E

# COOPERATIVE ENFORCEMENT AGREEMENT

between the

**UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

and

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
UNITED STATES COAST GUARD**

and

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT**

for

**LAW ENFORCEMENT SERVICES UNDER THE  
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT  
(16 U.S.C. 1801 *et seq.*)**

and

**ENDANGERED SPECIES ACT OF 1973  
(16 U.S.C. 1531 *et seq.*)**

and

**MARINE MAMMAL PROTECTION ACT OF 1972  
(16 U.S.C. 1361 *et seq.*)**



This Agreement is entered into by and between the Secretary of Commerce, the Commander, Fourteenth Coast Guard District for the United States of America, and the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (hereinafter referred to as the State).

**WITNESSETH:**

Whereas, the Magnuson Fishery Conservation and Management Act (MFCMA), as amended, 16 U.S.C. 1801 et seq., establishes a regime for managing certain fisheries in the exclusive economic zone (as established by Presidential Proclamation 5030, dated March 10, 1983) contiguous to the seaward boundary of each coastal state; and

Whereas, the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. 1531 et seq., and the Marine Mammal Protection Act of 1972 (MMPA), as amended, 16 U.S.C. 1361 et seq., provide for the protection and conservation of endangered and threatened species and marine mammals; and

Whereas, under 16 U.S.C. 1861(a) of the MFCMA, under 16 U.S.C. 1540(e) of the ESA, under 16 U.S.C. 1377(b) of the MMPA, the Secretary of Commerce and Commander, Fourteenth Coast Guard District are specifically authorized to enter into, among other things, agreements with State agencies to utilize such personnel, services, equipment and other facilities of such State agencies as may be necessary to carry out the enforcement responsibilities of the MFCMA, ESA, MMPA, and

Whereas, the State possesses law enforcement personnel, vessels, aircraft, vehicles, and other equipment and capabilities presently engaged in enforcing State conservation laws that could be utilized in assisting the Secretaries in carrying out the law enforcement responsibilities mandated by the Acts listed in this Agreement;

**NOW THEREFORE, it is mutually agreed:**

**I. DEPUTIZATION OF STATE OFFICERS AS FEDERAL ENFORCEMENT AGENTS**

**A. Those law enforcement officers of the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (hereinafter referred to as Officers) are hereby are deputized as Federal law enforcement agents and authorized to enforce the MFCMA, ESA, MMPA and regulations promulgated thereunder. Enforcement shall be compliance with directives established by the Secretary of Commerce and Commander, Fourteenth Coast Guard District, and their designees.**

**B. All Officers, while acting as federal law enforcement agents under this Agreement, shall possess the powers and authorities set forth in the MFCMA, ESA and MMPA but shall not be held or considered as employees of the United States for the purposes of any laws administered by the United States Office of Personnel Management. Such Officers, while acting as federal law enforcement agents, shall not be compensated, salaried or otherwise reimbursed by the United States for any services performed or expenses incurred in the performance of such duties except as provided by this Agreement.**

C. Such Officers may be covered under 5 U.S.C. 8191-8193, Law Enforcement Officers not Employed by the United States, for injuries sustained while enforcing Federal laws, provided the injuries occurred under one of the circumstances enumerated in Section 8191. The Secretary of Labor will provide compensation for covered injuries as enumerated in Section 8192. This coverage is intended to supplement rather than replace any state or local benefits otherwise payable.

D. All Officers, while acting as Federal law enforcement agents, shall be considered to be (1) investigative or law enforcement officers of the United States for purposes of the tort claims provisions of Chapter 171 of Title 28 of the United States Code, and (2) officers or employees of the Department of Commerce within the meaning of Sections 111 and 1114 of Title 18 of the United States Code.

E. Officers shall not have the authority to carry out any functions or responsibilities of the United States Government except as provided in this Agreement.

**F. Those Officers who for any reason leave or are removed from service as members of the Division of Conservation and Resources Enforcement will be simultaneously divested of authority conferred herein.**

**G. All Officers exercising authority under this Agreement shall submit written documentation of any action taken pursuant to this Agreement to the National Marine Fisheries Service Special Agent in Charge (SAC) for the Southwest Area, or the SAC's designee. Such documents shall include, but not be limited to, case investigation reports, a copy of any written warning or documentation of violation, and any supporting exhibits, affidavits, photographs or other evidence gathered. In addition, the State shall immediately notify the Special Agent in Charge or his/her designated representative of any arrest made as a result of any action brought under the Acts listed in this Agreement, and shall prepare and submit individual case investigation reports to the Special Agent in Charge on a timely basis. The National Marine Fisheries Service will be responsible for providing information**

to the U.S. Coast Guard on the status of cases made under this Agreement.

H. Any property, including cargo, fishing gear, vessels, fish or the fair market value thereof, seized under the authorities of the Acts listed in this Agreement shall be delivered to the United States Government official designated by the SAC or other appropriate federal authority. If such official, however, cannot be contacted, employees of the State will be expected to make reasonable arrangements for the temporary care, handling, and preservation of seized property. Costs to third parties with whom arrangements are made under this paragraph shall be considered as separate items for payment by the Secretary of Commerce and will not be the responsibility of the State.

I. Officers will be made available, upon request by the appropriate Federal authority, to appear as witnesses in connection with any action brought with which they have an involvement. It is the responsibility of the National Marine Fisheries Service to reimburse

the Officers who appear in cases related to this Agreement for travel expenses and per diem (at the federal standard rate) for travel incurred when appearing as a witness.

J. The State shall provide access to its law enforcement telecommunications network to the National Marine Fisheries Service and the U.S. Coast Guard. Costs incurred in acquiring access to and using the State communications system shall be borne by the National Marine Fisheries Service.

**II. POWERS OF AUTHORIZED OFFICERS UNDER 16 U.S.C.**  
**1861(b)**

A. In accordance with 16 U.S.C. 1861(b), Officers are hereby delegated the authority described in that section while performing duties in accordance with this Agreement.

B. No unilateral law enforcement action by the State with respect to foreign or stateless vessels is authorized by this Agreement.

If, however, foreign vessels are encountered, the State will immediately contact the Fourteenth Coast Guard District and await instructions before boarding, seizing any vessel, or making an arrest.

C. Any arrest or seizure of domestic vessels contemplated by the State shall be reported as soon as possible to the Special Agent in Charge or his/her designee, who, subject to the availability of appropriate personnel, will dispatch NMFS Special Agents to assist the Officers, or assist via radio or telephone communications when units are not available. National Marine Fisheries Service Agents and Coast Guard Boarding Officers have the authority to make arrests and seizures aboard a domestic vessel, and this authority is hereby delegated to Officers. The National Marine Fisheries Service and the United States Coast Guard will advise each other concerning arrests and seizures made under this Agreement.

### **III. UNITED STATES COAST GUARD ASSISTANCE TO THE STATE**



**A. Pursuant to 14 U.S.C. 141, the United States Coast Guard may, operational considerations permitting, provide assistance to the parties for the purpose of this agreement.**

**B. Officers may, operations and space permitting, accompany any United States Coast Guard vessel or aircraft on law enforcement patrols to aid in enforcement of the Acts listed in this Agreement.**

**C. If violations of State fisheries laws and regulations by fishing vessels registered under the laws of the State are detected by United States Coast Guard law enforcement patrols, the United States Coast Guard will notify the State and may provide back-up assistance consistent with the terms of this Agreement.**

**D. Subject to approval by the United States Coast Guard, personnel will be made available to appear as witnesses in connection with any criminal or in rem court proceedings resulting from any fishery enforcement action brought under State laws and regulations with which they have involvement.**

#### **IV. NATIONAL MARINE FISHERIES SERVICE ASSISTANCE TO THE STATE**

##### **A. TRAINING**

The National Marine Fisheries Service will provide training for the Officers in the enforcement of the Acts listed in this Agreement with the length of training and location to be agreed upon by the State. Training expenses, except travel, will be borne by the National Marine Fisheries Service.

##### **B. PROPERTY LOAN**

The National Marine Fisheries Service will loan the State purchased or excess (including seized) vehicles, vessels, and other operational equipment based upon the availability of said equipment. All property transferred hereunder will be on the basis of an executed Property Loan Agreement and Receipt form. Costs incurred for the transportation, care, handling and preservation of said property transferred under this paragraph shall be considered as separate items for payment and will be the responsibility of the State. If for any

reason the property on loan is lost, destroyed, or stolen by circumstances beyond the control of the State, the State will not be held responsible for reimbursement of the cost of said property.

#### **V. COMMITMENT BY THE STATE**

The State and the Secretary of Commerce, in managing the fisheries in their respective jurisdictions, agree to adopt conservation, management and enforcement measures and regulations which are complementary, in accordance with, and to the extent authorized by the Act and Hawaii statutes.

#### **VI. CONDITIONS AND TERMS OF AGREEMENT**

A. This Agreement shall be effective as of the date it is signed by all Parties and shall remain in effect until terminated by any Party, giving the other Parties written notice, in which event it shall terminate on the day immediately following the thirtieth day of such

notice. This Agreement may be amended with the mutual consent of the Parties in writing.

B. In no event shall this Agreement be interpreted to conflict with specific operating policies and procedures promulgated by any of the Parties without the express oral or written consent of an appropriate official of all of the Parties.

C. This Agreement shall be construed to be consistent with the MFCMA, ESA, MMPA and regulations promulgated thereunder.

D. Nothing herein is intended to conflict with current National Oceanic and Atmospheric Administration, United States Coast Guard, or State directives. If the terms of this Agreement are inconsistent with existing directives of the agencies entering into this Agreement, those portions of this Agreement that are determined to be inconsistent shall be invalid, but the remaining terms and conditions shall remain in full force and effect.